The Solicitors' Journal

Vol. 93 May 21, 1949 No. 21

CONTENTS

CURRENT TOPICS

Town and Country Planning Act: Claims on the Compensation Fund

GRAVE concern at the small number of claims received on the £300,000,000 compensation fund for loss of development value was voiced by Sir MALCOLM TRUSTRAM EVE, K.C., at a recent Press conference. Just six weeks before the final date for receipt of claims (30th June next) the total number of claims received is only 106,025—100,924 in respect of England and Wales and 5,101 in respect of Scotland. There can be no question of any further postponement of the final date and the Chairman of the Central Land Board is, not unnaturally, disturbed at the inadequacy of the response to the constant warnings put out by means of advertisements, broadcasts, posters, pamphlets and through the medium of the Press. Although about 40 per cent. of the claims received are in respect of single plots, it is apparently still not generally realised that single-plot owners will have development value "logged up" against the development charge only if their claims are submitted by 30th June. So far, development charges levied by the Board amount to approximately £750,000, while the amount "logged up" is about £731,000. The rate of lodgment of claims has clearly increased greatly since early March, when the number received was 54,005, compared with the November, 1948, total of 12,004, but the expected flood of last-minute claims will have to be very great if the number of participants in the Treasury scheme is in any way to correspond with the estimated number of potential claims.

Judges and Penal Reform

ALL lawyers who feel their responsibility to society should read with attention the article by Mr. GERALD GARDINER, K.C., and Mr. NIGEL CURTIS-RALEIGH in the April issue of the *Law Quarterly Review* on "The Judicial Attitude to Penal Reform." It contains an exhaustive and illuminating examination of recent claims by both the Lord Chancellor and the Lord Chief Justice that judges were not generally opponents of legal reform. Sir Samuel Romilly, cited by the Lord Chancellor as an example of a judge who promoted legal reform, was never a judge, the writers state. They quote occasion after occasion on which famous judges opposed humanitarian reform. Lord Ellenborough, Lord Eldon, Lord Hardwicke, Lord Tenterden, Lord Gifford, Lord Lyndhurst, Lord Mansfield and Sir James Stephen are all quoted as supporters of the harshest penal laws. In 1866, they point out, Lord Cranworth, Lord Bramwell, Lord Martin and Lord Wensleydale were against the establishment of a Court of Criminal Appeal, and in 1907 Lord Halsbury and Lord Alverstone opposed the passage of the Act establishing that court. The Magistrates' Association, the Lord Chief Justice and Lord Roche were against the abolition of whipping in the Criminal Justice Act, 1948. The article is not a mere indictment, for it draws the never too often repeated moral that "the reproach would seem to fall, not upon the judges, but upon those who so often have assumed that judges, some of whom have never been inside a prison and who are not required to make any study of penology, are, because of their experience in court, natural experts on questions of penal reform and, in particular, on those things in the hearts and minds of men which cause them to commit, or restrain them from committing, criminal actions." The authors are to be congratulated on this revealing analysis. Much else of interest is to be found in the *Law Quarterly's* April issue, which includes articles on "Red Tape," by Sir HENRY CLAY, on "The Non-Judicial Judge," by Sir CECIL CARR, K.C., on "The Standard of Proof in Adultery," by Mr. J. A. COUTTS, on "Some Unforeseen Consequences of Private Incorporation," by Mr. A. K. R. KIRALFY, and on "The Last Opportunity Rule," by the editor, Professor A. L. GOODHART, K.B.E., K.C.

Cost of Litigation

THE London Chamber of Commerce has always been in the vanguard of the movement for law reform, particularly in regard to the cheapening of the cost of litigation. Its more recent activities to this end are revealed in its annual report for 1948, presented at the 1949 annual general meeting of members. It states that it led a deputation to the Supreme Court Committee, on the invitation of LORD JUSTICE EVERSHED, and evidence was given on 25th February, 1948, in support of a memorandum approved by the General Purposes Committee. Discussions took place on a new draft order under the heading of "The Summons for Directions," which met the Chamber's criticism that the Rules of Court were too permissive. A proposal to make the preliminary discovery of documents compulsory was also considered. The deputation was given to understand that one of the

working parties was examining the question of having a fixed date for trials, which had been one of the main points advocated by the Chamber in its original memorandum of 1930. It was also stated that the separation of the Admiralty Court from the Probate and Divorce Division was also being considered and its amalgamation with the Commercial Court was being discussed. The Chamber stated that it had no objection to a proposal for fixing in advance costs recoverable by a winning party, but that the only practicable basis would be an *ad valorem* scale, subject to an escape clause for cases of special difficulty. The Chamber also expressed the view that in cases of litigation by or against Government departments, local authorities or large corporations which employed salaried solicitors and/or counsel, such department, etc., should, when successful, be entitled to recover only its out-of-pocket payments and any expense over and above the salaries to its legal advisers. Where it was clear that a question of principle affecting the public was involved, the case should be fought at the public expense. Where appeals to the Court of Appeal or the House of Lords were involved, the Chamber emphasised, it should be an absolute rule that the department, etc., should be allowed to appeal only at its own expense in the absence of an order to the contrary.

Leasehold Reform

THE London Chamber of Commerce's recently published report for 1948 also sets out the contents of a letter sent by the Chamber to the Departmental Committee on Leasehold Tenure Reform. It stated that it was appreciated that it would be very difficult to apply compulsory enfranchisement in the case of a block of offices. It was felt, however, that in the case of ground rents where the owner or the original tenant or lessee owned the whole building on a long lease, the difficulties might be surmounted. On the subject of security of tenure, the view was expressed that the existing tenant, on the expiration of his lease, should have the first right to renew his tenancy, and that if he was not satisfied with the terms offered, he should have the right to appeal to an independent judicial tribunal. The Chamber recommended also that rents of business premises should be subject to regulations, but that it would be inequitable to fix an arbitrary basis for such regulations, and every case should be treated on its merits. For example, if a percentage were allowed to be added to the rent payable in a basic year, the uplift might be quite inadequate.

The National Health Service (Amendment) Bill

A NUMBER of amendments relating to medical practices are contained in the National Health Service (Amendment) Bill, the text of which was published on 13th May. One of the most important things which it does is to give effect to the undertaking given by the Minister of Health that a whole-time salaried State medical service would not be introduced without legislation. It provides that a full-time service shall not be introduced by regulation either for general practitioners or specialists, and the necessary amendments to the National Health Service Acts are proposed. The Bill also provides, pursuant to the findings of the Slade Committee, that there shall be no prohibition on the sale of practices where required by partnership agreements in force before 5th July, 1948. Where one partner not in the service is obliged to buy the share of a partner in the service—which may be of little value to the former—that obligation becomes an option, and the partner in the service is no longer entitled to be paid compensation out of the fund. But where a partner in the service is obliged to buy the share of a partner outside the service, he will be entitled to compensation from a fund additional to the original compensation fund. There is a further provision that, where one partner in the service sells the goodwill of his practice to another partner in the service, the compensation payable under the Acts is substituted for the contract price provided for in the partnership agreement, and becomes payable on the transfer taking place.

Local Government Boundaries

THE crying need for fresh legislation in order to create effective and convenient units of local government is underlined in the report for 1948 of the Local Government Boundary Commissioners. Unfortunately the Government has decided that it would not be practicable to introduce comprehensive legislation affecting the structure of local government in the near future, and the Commissioners therefore have come to the conclusion that it is now their duty to proceed with their work on the basis of the existing law and regulations. They state that their plan, published in the report for 1947, which included the introduction of a new kind of local authority, occupying an intermediate position between county boroughs and boroughs, aroused general interest but no discussion in Parliament beyond a brief debate in the House of Lords. Accordingly they intend that any orders they may make shall be such as to be appropriate whether the law is amended on the lines of their recommendations or not. They give as examples of the sort of orders which would be appropriate the union of two or more counties or the extension of some boroughs.

Articled Clerks' Exemptions

THE Council of The Law Society have recently reviewed the war-time exemptions of articled clerks with war degrees from the law portion of The Law Society's Intermediate Examination and from compulsory attendance at a School of Law provided or approved by the Society under s. 32 of the Solicitors Act, 1932. The result is that new regulations have been, as from 11th February, 1949, substituted for reg. 17 of the Preliminary, Intermediate and Final Examination Regulations, 1946, and reg. 16 of the Law School Attendance Regulations. Exemption from the law portion of the Intermediate Examination can now be claimed by an applicant who has passed specific examinations or obtained specific degrees before or after entering articles of clerkship. The examinations are those for the degree of LL.B. at the Universities of Aberdeen, Birmingham, Bristol, Cambridge, Durham, Edinburgh, Glasgow, Leeds, Liverpool, London, Nottingham, Sheffield, Wales, and the Victoria University of Manchester, and the Queen's University of Belfast, or for the degree of B.C.L. at Durham or Oxford. An aegrotat certificate in respect of such examination is sufficient. Exemption is also given to persons who before or after entering articles of clerkship have either (1) taken Honours in the Oxford Final Honours School of Jurisprudence or have passed two of the special sections in jurisprudence leading to a war degree, or (2) at the University of Cambridge taken Honours in the Law Tripos (Part II) or passed the Law Tripos (Part II) (Emergency Regulations), or have obtained an aegrotat certificate. The regulation applies only to persons becoming bound by articles after 31st December, 1936.

Recent Decisions

In *Marsh* v. *Moores*, on 6th May (*The Times*, 7th May), a Divisional Court (the LORD CHIEF JUSTICE and BIRKETT and LYNSKEY, JJ.) held that there was in force a valid policy of insurance against third-party risks where an employee wrongfully allowed his cousin to drive under his guidance in giving a driving lesson without the knowledge or permission of his employers, as the unauthorised act was within the scope of his employment, and he still retained control of the vehicle.

In *Honey* v. *Redfern*, on 11th May (*The Times*, 12th May), a Divisional Court (the LORD CHIEF JUSTICE and BIRKETT and LYNSKEY, JJ.) held that no offence against art. 7 of the Aliens Order, 1920, as amended by the Aliens (No. 2) Order, 1945, had been committed where a landlord demised all the rooms in a house to different tenants and that there was no evidence to justify a finding that the rooms were lodgings. The landlord had not taken signed statements from tenants who were aliens of over sixteen years.

REBUILT HOUSES : TERMINATION OF CONTRACTUAL TENANCY

Now that the ravages of war are being repaired, and the gaps in many a row of houses filled, the hazards which affect the rebuilt house become a common matter of concern to practitioners. Before such houses are sold or leased it is necessary to be sure that the tenant who occupied the house when it was damaged has no continuing interest in the premises. Quite apart from the inconvenience of the reappearance of a former tenant, or rather of "*the* tenant" in some cases, questions of actions for breach of contract and breach of covenant for quiet enjoyment may arise if the purchaser or new tenant finds himself deprived of what he bargained for—vacant possession.

If the tenancy was a statutory one at the time of the incident, no difficulty will arise, for a statutory tenancy is lost with the destruction of the house to which it attached. Before leaving the matter there, however, it would be wise to ascertain that proof of the existence of a statutory tenancy is available, e.g., notice of increase of rent, or proof of service of notice to quit.

Similarly, no difficulty is likely where the tenancy was contractual but the whereabouts of the then tenant are known and a notice to quit can be served on him before the house is sufficiently rebuilt to be fit for occupation. Provided that is done, there is, at the time of expiry of the notice to quit, no house "let as a separate dwelling" to which the Rent Acts could apply (*Ellis and Sons Amalgamated Properties* v. *Sisman* (1947), 91 SOL. J. 692). The difficulty comes when the tenant cannot be found, for he is then, if his tenancy is still undetermined, entitled to claim possession of the new house as a contractual tenant, his estate in the *land* never having been determined (*Simper* v. *Coombs* (1948), 92 SOL. J. 85).

It is impossible to determine a tenancy unless the tenant can be found and served with a notice to quit : there is no method of leaving the notice on the site, or serving by advertisement. It was to meet this difficulty that subs. (6) of s. 1 was inserted in the Landlord and Tenant (War Damage) (Amendment) Act, 1941. This provision reads as follows : "Where the court is satisfied, on the application of the landlord of any land let on a short tenancy which has been rendered unfit by war damage, that—

(*a*) the land is fit ;

(*b*) a period of not less than three months has elapsed since the land was rendered fit, and during the whole of that period the tenant has not been in occupation of the land either in whole or in part and has not paid any rent in respect of that period or any part thereof ; and

(*c*) the landlord has made all reasonable efforts to communicate with the tenant and has failed to do so ;

the court may, if it thinks fit, determine the tenancy and give immediate possession of the tenant's interest in the land and, where the tenant has sub-let the whole or any part of the land, the court may give directions preserving the rights of the sub-tenant or determining those rights, either immediately or after the landlord has complied with such requirements as may be specified."

It will be noted that this is a discretionary matter—"the court *may, if it thinks fit,* determine the tenancy"—and as the subsection confers an unusual power, the courts will insist on strict compliance with all the requirements of the Act, which it will therefore be necessary to consider in detail.

Requirement (*a*) will be satisfied by production of the usual certificate required before a new house is occupied, obtained from the local authority and signed, usually, by the borough engineer and surveyor. (It may here be noted that *until* such certificate is issued, the house is not, according to a recent county court decision, "fit for occupation" sufficiently to enable a statutory tenancy to arise on determination of the contractual tenancy : *Webb* v. *Rowley*, "Estates Gazette," 8th January, 1949, p. 23.) Requirement (*b*) calls for little comment, except to say that, apparently, if the tenant *does* occupy or pay rent at any time after the house is rendered fit and *then* disappears, the subsection cannot be invoked even by waiting for a further three months.

Requirement (*c*) is the crucial one. What will be considered "all reasonable efforts" is a matter which varies from court to court, but it is submitted that inquiries among neighbours and tradesmen, together with inquiries of the local authority in the area, are sufficient to satisfy the requirement. To require a landlord to advertise the fact that a new house is awaiting the former tenant by insertions in newspapers would, it is suggested, be to place an altogether unreasonable burden upon him. However, the inquiries suggested must obviously be fairly substantial in order to comply with the wording of the subsection.

These three matters are not, however, the only ones of which proof will be required. The applicant must satisfy the court that at the time of the incident the house was let on a "short tenancy" (defined in s. 1 (10) as "any tenancy or sub-tenancy which the tenant is entitled to determine at any time by a notice expiring not later than the end of the next complete quarter or the next complete three months of the tenancy, and, in a case where a person is holding over any land, which he previously held under a short tenancy, by virtue of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, the Courts (Emergency Powers) Acts, 1939 to 1941, or the Liabilities (War-Time Adjustment) Act, 1941, he shall be deemed to be holding the land under a short tenancy"). This thus includes all weekly, monthly and quarterly tenancies. The fact that the land was "rendered unfit by war damage" will also have to be proved. Both the short tenancy and war damage may be proved by the landlord's own evidence if he was landlord at the time of the incident, but at this stage it often happens that the site has changed hands. In that case either the evidence of the previous landlord or of his agent will be necessary on these points. The fact of war damage might also, of course, be proved by evidence from a variety of other obvious sources.

Finally, the applicant must satisfy the court that he is now the landlord of the premises. Thus, if the house has changed hands since the incident it will be necessary to produce the conveyance or other evidence of title.

The application is made to the county court by way of originating application, and the following form has been found to be effective :—

In the —— County Court.

In the matter of the Landlord and Tenant (War Damage) (Amendment) Act, 1941.

Between Loamshire Properties Ltd. - - Applicants

and

James Jones - - - - - Respondent.

We, Messrs. Jackson, Johnson and Company, of 2, Chancery Street, Blanktown, solicitors for the above-named Applicants, apply to the Court for an Order determining the tenancy of the Respondent in certain premises known as 2, Loam Avenue, Blanktown, in the County of Loamshire, and giving immediate possession thereof to the Applicants, who are the landlords of the said premises, in accordance with the provisions of s. 1 (6) of the above-named Act.

The grounds upon which the Applicants claim to be entitled to the said Order are those set forth in subs. (6) of s. 1 of the aforesaid Act.

It is not proposed to serve this Application upon the Respondent as all reasonable steps have been taken to ascertain his whereabouts without success, which is the reason for taking these proceedings.

The Applicants' address for service is . . ., etc.

Dated this 5th day of June, 1948.

Jackson, Johnson and Co.,
Solicitors for the above-named Applicants.

VENUE FOR SUMMARY PROCEEDINGS UNDER THE GUARDIANSHIP OF INFANTS ACTS

THE question of venue for civil proceedings before magistrates was discussed at p. 207, *ante*, and proceedings under the Guardianship of Infants Acts were lightly touched upon. In response to a reader's request it is proposed in the present article to consider in greater detail in which courts of summary jurisdiction proceedings for custody and access under the Guardianship of Infants Acts, 1886 and 1925, should be brought.

Prior to 1925, magistrates' courts were not concerned with Guardianship of Infants legislation, and orders for custody and access were made by "the court" under s. 5 of the Act of 1886. Section 9 of the same Act provides:—

> "In the construction of this Act the expression 'the court' shall mean:
>
> In England the High Court or the county court of the district in which the respondent or respondents or any of them may reside."

By s. 3 (2) of the Act of 1925 power was given to "the court," when making a custody order, also to make a maintenance order on the father, and s. 7 (1) provides:—

> "For the purposes of the Guardianship of Infants Act, 1886, as amended by this Act, the expression 'the court' shall include a court of summary jurisdiction."

By s. 7 (2) the Lord Chancellor was empowered to make rules "regulating the procedure" in courts of summary jurisdiction. He duly made the Guardianship of Infants (Summary Jurisdiction) Rules, 1925, and r. 3 (1) provides:—

> "The power of a court of summary jurisdiction (under the Acts of 1886 and 1925) shall be exercised by an order upon complaint in accordance with the Summary Jurisdiction Act . . ."

Leaving aside the rules for the moment, it would seem that s. 9 of the Act of 1886, as amended, may now be read in at least two ways:—

> "In the construction of this Act the expression 'the court' shall mean:
>
> (A) In England the High Court or the county court or court of summary jurisdiction of the district in which the respondent . . . may reside."

or

> (B) "In England the High Court or the county court of the district in which the respondent . . . may reside or a court of summary jurisdiction."

If interpretation (A) is correct, only the magistrates' court in whose area the respondent or one of the respondents resides has jurisdiction to make orders under the Acts. There is nothing incongruous in using the word "district" to describe a petty sessional area; s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, so uses it.

It is submitted, however, that interpretation (B) is correct because, if the Legislature had meant that only the magistrates' court in whose area a respondent resided was to have jurisdiction, it would have so enacted in clear terms. It is not for the courts to remedy omissions in a statute. It is accordingly necessary to consider what magistrates' courts can deal with proceedings under the Acts.

At 112 J.P. News. 723 it is suggested that jurisdiction attaches where the cause of complaint arises so that the venue may be where actual custody is being exercised or, alternatively, where the complainant resides. The learned editors of Lieck and Morrison on Domestic Proceedings, at p. 155, suggest that venue may be both where actual custody is being exercised and also where the person in whom the legal custody is vested happens to be. *Prima facie*, they say, the legal custody is vested in the father, but this state of affairs may be altered by a deed of separation vesting the legal custody in the mother. A metropolitan magistrate has held that the London court has no jurisdiction to make an order for access by a father living in London to his children living with the mother in Berkshire pursuant to a separation deed giving her the custody (89 J.P. News. 641). The learned editors of Clarke Hall on the Law of Adoption and Guardianship of Infants were of the same opinion as the editors of Lieck and Morrison in regard to the venue for proceedings under the Guardianship of Infants Acts.

Though it is perhaps doubtful whether the rules made in 1925 expressly apply the law of summary jurisdiction as to venue (because such rules can only "regulate the procedure"), the High Court would, it is suggested, apply such law by analogy in deciding whether a magistrates' court had jurisdiction. The general law of summary jurisdiction as to venue for complaints is not to be found in any statute, but the practice of years shows that a complaint may be made where the cause for it arises. In proceedings under the Guardianship of Infants Acts the cause of complaint may certainly be said to arise where the children are. When the person having the legal right to custody (either as father or by virtue of a deed or court order) is in a place which is not the same as that where the children are, it is suggested that the magistrates' court for the area in which he is has concurrent jurisdiction because, the cause of complaint being the non-obtaining or non-giving of custody or access by him, such cause arises where he is. As already stated, the learned editors of Lieck and Morrison on Domestic Proceedings take the view that venue is where the children are or where the person having the legal right to custody is.

The opinion given at 112 J.P. News. 723 (that proceedings may also perhaps be brought where the complainant is) appears to conflict with the cited decision of the metropolitan magistrate (89 J.P. News. 641); such opinion is perhaps supportable by arguing that, as the Acts of 1886 and 1925 do not expressly limit jurisdiction, it attaches wherever the father or mother may be, especially as the mother has, by s. 2 of the Act of 1925, an equal right to apply to the court.

Clarke v. *Clarke* [1943] P. 1 (in which it was held that a wife maintenance order could be made against a husband for neglect to maintain either where he was or where she was) is not relevant to proceedings under the Guardianship of Infants Acts because under them maintenance can only be ordered where a custody order has been first made.

In the event of a father having the actual custody of the children desiring to obtain an order under the Acts against the mother, it is suggested that, on the reasoning given at 89 J.P. News. 641 (already cited), it would be unwise to proceed in the court of the area where she is, however inconvenient it might be for her to come to the father's home court. This opinion is, of course, based on the assumption that there is not jurisdiction wherever the mother may be.

Where simultaneous proceedings under the Guardianship of Infants Acts and the Summary Jurisdiction (Separation and Maintenance) Acts are brought, the complainant should be careful to see that the court has jurisdiction under both sets of Acts. For example, where a husband commits acts of cruelty to his wife in borough X and then both leave the borough with the children and go to borough Y, the X magistrates have jurisdiction to make a separation order, but no jurisdiction to make a custody order, under the Acts of 1886 and 1925. Likewise, the Y magistrates have no jurisdiction to make a separation order.

Suppose the respondent appears to a summons under the Guardianship of Infants Act issued by magistrates who have no jurisdiction to issue it and does not object to their jurisdiction, can the magistrates then make a valid order? It would seem that any order made by them is invalid since his appearance does not of itself confer jurisdiction if it be lacking (*Johnson* v. *Colam* (1875), L.R. 10 Q.B. 544). In fact, even if the respondent was aware of the lack of jurisdiction and expressly waived objection to it, the order would still apparently be invalid (*Foster* v. *Usherwood* (1877), 3 Ex. D. 1; cf. *Forsyth* v. *Forsyth* (1947), 91 SOL. J. 691).

The jurisdiction of metropolitan police magistrates is discussed in Appendix 3 to Lieck and Morrison (*op. cit.*).

It is clear that the metropolitan magistrate for one metropolitan police court has jurisdiction in matters arising within the area of another metropolitan police court (*Froud* v. *Froud* (1920), 123 L.T. 176, where a complaint from Clerkenwell was held to have been properly adjudicated upon in Marylebone). It is suggested in the Appendix that their jurisdiction is even wider and extends to so much of the Counties of Kent, Surrey, Middlesex, Essex and Herts as is not comprised in boroughs having a separate commission of the peace.

G. S. W.

DEVELOPMENT AND DEVELOPMENT CHARGE—III

AFTER the general principles for assessing development charge and details of its assessment on various types of property (*ante*, pp. 259, 295) we come to the last two Parts of the Central Land Board's Practice Notes (First Series), which comprise the procedure for applications to determine and vary development charge and the payment of the charge.

As is by now well known, the form of application for a determination is the Board's form D.1, which must be submitted before any development not exempt from charge is started. The Notes point out (para. 105) that the application must be made if a charge is payable by law, even though it is thought (or even certain) that on valuation the charge may be nil. The penalty, however, for developing without applying is the liability to have to pay an additional sum not exceeding twice the amount of the charge. If, therefore, the charge itself on valuation is nil the developer will not suffer any penalty. However, it is obviously desirable to obtain a determination in every case, quite apart from the fact that it is required by law, in order to avoid difficulties with prospective purchasers on a sale of the property. Similarly, in order to settle any such future difficulties it will be advisable to apply where there is any doubt as to whether the proposed operation or change of use falls within any of the exemptions from charge, though it must be remembered that there is no appeal from the Board's determination.

The charge is calculated on the increase in value of land resulting from planning permission for development. It is not essential that the relevant planning permission should have been obtained before submission of the form D.1, though it is only in a very exceptional case that it will be of any benefit to submit a form D.1 before planning permission is obtained, for the Board will always have to postpone their determination until planning permission is available at least in outline (Notes, para. 107).

On the other hand, it does not follow that after a planning permission has been obtained the Board will forthwith proceed to make a determination. The Board will require to be satisfied that the applicant is able to and will carry out the development within a reasonable time and they are unlikely to issue a determination if the development is improbable within one year, unless it is a very large one (Notes, paras. 120 and 121).

The power to postpone giving a determination is conferred on the Board by s. 70 (1) of the Act. The intention is that the charge should be valued as at the time the development takes place. If an applicant were to be entitled to a determination as soon as he has obtained planning permission he might, by obtaining such permission several years before developing, obtain a low valuation and thus, when the land became ripe for development after the passage of years, obtain a large element of development value for himself and defeat one of the objects of the Act. On the other hand, the period of one year adopted by the Board for normal cases seems unduly short at the present time when building licences are scarce. An applicant may buy land for development and, through no fault of his own, may have to pay a higher development charge because he is unlikely to obtain a building licence within a year. An an example, A and B buy neighbouring plots on the outskirts of a large town; A obtains a building licence and builds within a year; after A has had his charge determined, it is announced that the railway service will be electrified and greatly improved; B, who had no likelihood of obtaining a licence within a year, then has his charge determined and may well have to pay more than A, because with the improved services may come an increased demand for houses and consequently a higher market value for the consent value. It would seem reasonable in present circumstances for the Board to take a three-year period in considering whether to postpone determinations rather than one year.

It is contemplated that normally the form D.1 will be submitted to the local planning authority with the application for planning permission. It is interesting to note that, except in the case of estates where an agent is accustomed to act on behalf of the owner, the Board will accept a form D.1 which is not signed by the applicant personally *or his solicitor* only if it is accompanied by a document signed by the applicant authorising the agent to act on his behalf in dealing with the application (Notes, para. 111). This is a welcome recognition of the solicitor's professional position.

It is not necessary that the form D.1 should relate to the whole of the development in a planning permission. The applicant may include part only in his form D.1 (Notes, para. 108); he will then have to submit a further form D.1 for the remaining development in the permission before he carries this out.

Where a material change of use is the development concerned, the applicant may apply (s. 72 (2), proviso (*b*)) for the determination of the development charge to be made for a limited period only, even if the planning permission is a permanent one. This is very important for lessees and tenants, e.g., a prospective lessee obtains planning permission to use a dwelling-house as a shop and takes a seven-year lease; he should apply for the charge to be determined for a seven-year period only, otherwise his landlord will receive the benefit of some part of the higher charge which will be paid for an unlimited period. In the case of buildings the Board cannot determine the charge for a limited period unless the planning permission is for a limited period; therefore, if, in the example given, the lessee has to make alterations involving development, not exempt from charge, to which the landlord will not contribute, it might be to his advantage to ask the planning authority to give a limited period permission for seven years. If he is able to obtain a renewal of his lease at the expiration of this period he can apply for the grant of a further limited period permission and will have to pay a further development charge in respect of the new period (Notes, paras. 122–125).

Assuming that the application for determination of the charge is made, and is in order, it proceeds as follows (Notes, paras. 112–115):—

(1) Within fourteen days of receipt by the Board of the application in normal cases the applicant will receive a letter—

(*a*) if the development appears to be exempt or the valuation of the charge on the face of it appears to be nil, from the Board's office with a decision to that effect if possible;

(*b*) otherwise, from the district valuer's office inviting the making of an early appointment to discuss, and if possible agree, the amount of the charge.

(2) Within one month of receipt of the application the district valuer will notify the applicant of his recommended determination. This period may be extended in complicated cases or by agreement.

(3) The applicant pays the charge or secures it to the Board's satisfaction.

(4) The Board issue a certificate of satisfaction.

Section 69 (1) of the Act provides that development shall not take place, except with the consent in writing of the Board, until the amount of the charge has been paid or

secured *and* the Board have so certified. It is, therefore quite in order for the development to take place—

(*a*) before the issue of a certificate of satisfaction, with the consent of the Board, or

(*b*) after the issue of the certificate.

When the district valuer's recommendation as to the amount of the charge has been received the applicant may, if he wants to develop immediately, pay the amount recommended to the Board with a statement that he agrees it, and the receipt received will operate as a " consent " pending the issue of a certificate of satisfaction (Notes, para. 116).

A purchaser of property is naturally concerned to know whether there is any outstanding liability for development charge which may affect him. He may be affected in two ways, namely—

(1) if the vendor or a predecessor in title has carried out development, not exempt from charge, without applying to the Board for determination of charge, the Board are in a position to make an order under s. 74 charging the interest of the purchaser with the charge his vendor or other predecessor should have paid, plus interest and an additional sum not exceeding twice the amount of the charge by way of penalty ;

(2) if a development charge has been secured upon the property.

To safeguard himself in respect of (1) the purchaser (the same considerations apply to a mortgagee or lessee, for their interests may also be charged under a s. 74 order) must—

(*a*) ascertain whether any development on which a charge is payable has been carried out since 1st July, 1948 ;

(*b*) search in H.M. Land Charges Registry to make sure no order under s. 74 has been registered (these have to be registered as Class A land charges) ; and

(*c*) require the vendor to produce either the Board's consent to proceed or the Board's certificate of satisfaction ; the purchaser is not concerned to see if the charge has actually been paid since, if either of the documents mentioned is produced, the Board cannot make a s. 74 order or otherwise charge the land in the purchaser's hands for outstanding money or instalments.

To safeguard himself in respect of (2) the purchaser need only investigate the title in the normal manner, as the Board's security will take the form of an ordinary mortgage or charge.

The foregoing remarks relate to cases where development has been carried out, but there may be cases where a vendor has obtained the Board's consent to proceed or certificate of satisfaction but, before developing, agrees to sell the land to a purchaser at a price inclusive of the development charge. Section 72 (1) of the Act gives the Board power to direct that a determination shall cease to have effect if, before the development takes place, any interest in the land is transferred or created (otherwise than by operation of law) unless the determination is confirmed by the Board, on application, with or without modifications. The Board state (Notes, para. 119) that such a direction will never be issued in a separate document and, if it is not contained in a consent to proceed or certificate of satisfaction, it can be safely assumed that no such direction has been or will be given. Therefore, a purchaser, in the cases with which this paragraph is concerned, should ask the vendor to produce his consent or certificate and, if there is no direction limiting its duration contained therein, may safely complete his purchase, knowing that neither he nor any successor in title will have to pay any development charge for the development when it takes place.

The Act (s. 71 (1)) allows payment of a charge to be made by—

(*a*) a single capital sum ;

(*b*) instalments of capital ;

(*c*) instalments of capital and interest combined ;

(*d*) other annual or periodical payments.

The Board consider (Notes, para. 133) that in the great majority of cases method (*a*) will be used ; where the whole charge has not been paid before commencement of the development the Board will expect a security, carrying a normal commercial rate of interest, to be given for the amount outstanding (Notes, para. 133). Method (*b*) may be appropriate where, in past practice, the development value has not been realised until the erection of a building, e.g., the sale of houses on a building estate (Notes, para. 135). Under the special arrangements relating to near-ripe land and single building plots payment of charge is postponed until 1953 and set off against payments out of the £300m. fund (Notes, para. 137).

R. N. D. H.

MATRIMONIAL PRACTICE NOTES—IV

VIII.—DESERTION—OFFERS OF A HOME

At one time it was a generally accepted proposition that the husband had the right to decide where the matrimonial home should be (see *Mansey* v. *Mansey* [1940] P. 139) and that the wife's refusal to live there put her into a state of desertion. To-day one can only say that it all depends on the circumstances of the particular case, but this apparently unsatisfactory state of affairs is perhaps the result, not of a loss of neatness and precision in the law itself, but of an increase in the difficulty and diversity of the circumstances in which it has to be applied.

When a husband could say, " Here is a brand new house, full of furniture, in the town where I earn my living," it was difficult to treat the wife's refusal to live with him as anything but desertion, but when all that is offered is a furnished room or a married quarter in barracks to a woman whose parents are willing to accommodate them both in a comfortable home, the answer does not spring so readily to mind.

However, to find a standard rule which can be applied to all cases, one must go back to the elementary principle that the legal burden of proof rests upon the party alleging an offence by the other. Desertion means " desertion without reasonable cause " and, therefore, the legal burden remains on a husband throughout the case to prove that his wife has deserted him. It is not necessary for the wife to prove affirmatively that she had just cause unless the husband wholly discharges the legal burden of showing *prima facie* desertion without just cause (*Dunn* v. *Dunn* (1948), 92 Sol. J. 633).

If that test is applied, it appears at once that a husband has to prove much more than a refusal to his question, " Will you come and live with me ? " It would hardly seem necessary to mention that the offer must at least have been made *bona fide*, if it were not for the frequency with which husbands triumphantly produce copies of their offers of accommodation and their wives' letters of refusal. Both the reasonableness of a genuine offer in the particular circumstances and the unreasonableness of its rejection must, then, be substantiated by the party seeking to prove desertion.

In *Dunn* v. *Dunn*, *supra*, the Court of Appeal considered that it was unreasonable for a husband to ask the wife to leave the home in which she had been living for twenty years and to send her daughter to be looked after by her mother so that she could join him temporarily during war-time. The case was really decided on the " burden of proof " principle, but the court also discussed and failed to agree on the question whether a husband has a casting vote, *ceteribus paribus*. Denning, L.J., thought that there was an obligation on both spouses to agree where their home should be and that the one who unreasonably obstructed such agreement was guilty of desertion. Pilcher, J., on the other hand, considered that somebody must have a casting vote and that, under ordinary circumstances, this ought to be the husband. Unfortunately, circumstances so often show an unreasonable refusal to be ordinary.

In *McGowan* v. *McGowan* (1948), 92 Sol. J. 647, the decision was in favour of the husband, but if it is regarded as being merely the converse case in applying the same rule as to the

legal burden of proof, the apparent inconsistency disappears. The wife, having without sufficient cause left the husband with whom she had been living at his parents' home, took a flat in another part of the same town and requested him to join her. On his refusing to do so she issued a summons alleging wilful neglect to maintain her. The Divisional Court held that having deserted her husband in the first place, she did not bring her desertion to an end by offering to live with him elsewhere than in the place of his choice unless she could show that the place of his choice was not a reasonable home for him to offer her, having regard to all the circumstances. The finding, therefore, was not based on any rule that a husband has the last word but, once again, that a party alleging a set of facts, in this case the wife, must discharge the burden of proof, and this she had failed to do.

IX.—DESERTION UNDER THE SAME ROOF

Although it has been said that desertion is essentially a withdrawal from the state of cohabitation rather than from the place of cohabitation (*Pulford* v. *Pulford* [1923] P. 18) and may exist although the parties are living under the same roof, provided there has been a complete withdrawal from the "matrimonial consortium" (see *Jackson* v. *Jackson* [1924] P. 19), the degree of physical separation remains as a most material factor in determining whether there is desertion or not. It would, no doubt, be theoretically possible for desertion to exist between spouses living on opposite sides of the same tent pole, but it would be exceedingly difficult to show that the *animus deserendi* had been accompanied or followed by the *factum* of separation, or that the connubial state was distinguishable from one of chronic discord or gross neglect which would not in itself constitute desertion so long as the parties continued to enjoy the amenities of the same establishment.

The authorities on this difficult subject were comprehensively reviewed by the Court of Appeal in *Hopes* v. *Hopes* (1948), 92 SOL. J. 660, and the judgments in that case are a most useful guide to the solution of problems of this kind. The court made it quite clear that a line must be drawn in all cases between desertion, which is a ground for divorce, and gross neglect or chronic discord, which is not, and that that line was drawn at the point where the parties were living separately and apart. In cases where they were under the same roof, that point was reached when they ceased to be one household and became two households.

The court found that on the whole the cases formed a consistent body of law, but two recent decisions showing a contrary tendency, *Evans* v. *Evans* (1947), 91 SOL. J. 664, and *Wanbon* v. *Wanbon* [1946] 2 All E.R. 366, were disapproved and the *dictum* quoted above from *Pulford* v. *Pulford* was explained as relating only to the question of the commencement of desertion when the parties were already separated.

There are two classes of desertion under the same roof, as there are of other kinds. In one, the guilty party, without cause, withdraws from cohabitation, while in the other the innocent party breaks off relations, being impelled to do so by some unbearable conduct of the other. In either case the same test must be applied in order to ascertain whether there is *de facto* separation. The parties must have ceased to occupy the same *household* and its common amenities. If, therefore, the wife has ceased to cook, wash and mend for the husband and even to speak to him, but they nevertheless continue to sit by the same fireside, there can be no desertion. If, on the other hand, she has shut herself up in one or two rooms of the house and has ceased to have anything to do with her husband, she is as effectively separated from him as if they were separated by the outer door of a flat, and the fact that they may meet on the stairs or in the passage, as they might do if they had separate flats in one building, does not alter the position.

A complete separation of this kind having been established, it is then necessary to assess the conduct of the parties which has led to it and caused it to continue, in the same way as in any other case of desertion where, for example, the husband has enlisted or the wife has gone to live with her relatives. If one party has withdrawn completely, without cause and against the other's will, that is desertion of the straightforward kind. Conversely, if the innocent party can show that the other has been guilty of such grave conduct as to compel withdrawal, the proof of constructive desertion is complete, but so long as that conduct is borne by the innocent spouse without an actual separation taking place, it cannot amount to desertion, whatever other offence it may be. In relation to desertion, it is merely an expression of the *animus* without the *factum*.

E. T. E. M.

Company Law and Practice

DISSENTIENT SHAREHOLDERS IN SCHEMES OF ARRANGEMENT

THE court has once more been asked to consider the grounds on which it ought to intervene on an application by dissentient shareholders under s. 209 of the Companies Act, 1948. It may therefore be of interest at this time to consider the recent decision of the Court of Appeal in *Re Press Caps, Ltd.* [1949] W.N. 196, in the light of statutory development and previous decided cases.

Section 155 of the Companies Act, 1929, was the first statutory provision regulating the position of dissentients under a scheme of arrangement, and before 1929, as will be seen later on in this article, the question of their rights lay in the discretion of the court.

The Cohen Committee on Company Law Amendment found that s. 155 was defective in three respects. First of all the procedure under the section was not available to a company where it already held more than 10 per cent. of the shares or class of shares it sought to acquire. This defect has now been remedied, and if the transferee company holds more than 10 per cent. of such shares, the shares of dissentients may be acquired provided that the transferee company offers the same terms as were offered to the shareholders who approved the scheme, and also provided that the shareholders who approve the scheme are not less than 75 per cent. in number of the shareholders holding not less than 90 per cent. in value of the shares or class of shares whose transfer is involved.

Secondly, under s. 155, a company could, if it obtained the requisite 90 per cent., compel the dissentient minority to sell their shares, but the dissentient minority had no power to compel the company to acquire the shares held by them, although their position as a small minority in a subsidiary company might be anything but satisfactory. This defect has now been remedied by s. 209 of the 1948 Act, and where the transferee company has given notice to the dissentients to acquire their shares the dissentients may within three months require the transferee company to acquire the shares in question. The transferee company is then bound to acquire them on the terms offered by the scheme or on such terms as may be agreed between the parties or as the court (on the application of either the transferee company or the shareholders) thinks fit to order.

Thirdly, under s. 155, the shares of a dissenting shareholder could, in effect, be transferred without an instrument of transfer—which was inconsistent with s. 63 of the 1929 Act (now s. 75). Section 209 of the 1948 Act requires an instrument of transfer to be executed on behalf of the dissentient shareholders by any person appointed by the transferee company and by the latter on its own behalf.

These amendments which have thus been brought into force by s. 209 of the 1948 Act improve the efficacy of the machinery for the acquisition of the shares of dissentients under a scheme of arrangement. It will, of course, be noticed that a dissentient shareholder still has the right to apply to the court within one month from the date on which notice is given to him by the transferee company to acquire his shares, and the court may refuse to allow the shares of the dissentients to be acquired or may impose terms and conditions in respect of the acquisition of the shares. The Legislature has not, however, attempted to give any guidance to the court as to how far the court ought to intervene on the application of dissentient shareholders—nor did the Cohen Committee recommend that any such attempt should be made.

In *Re Hoare, Ltd.* (1934), 150 L.T. 374, Maugham, J. (as he then was), ventured to remark that he was not quite able to understand why the Legislature should ever have passed s. 155. Maugham, J., presumably meant that, if a scheme of arrangement did not give dissentient shareholders fair treatment, it would not be sanctioned by the court. On the other hand, before 1929 the position of dissentients under a scheme of arrangement was uncertain, and their position is well summarised by Astbury, J., in *Re Anglo-Continental Supply Co.* [1922] 2 Ch. 723, at p. 734. It was there laid down, *inter alia*, that where a scheme of arrangement could not be carried through as a reconstruction under s. 287 of the 1948 Act (s. 234 of the 1929 Act, and s. 192 of the 1908 Act), although it involved a sale to a company within that section for " shares, policies and other like interests " and for liquidation and distribution of the proceeds, the court could sanction it as a scheme of arrangement under what is now, with some modification, s. 206 of the 1948 Act (s. 153 of the 1929 Act and s. 120 of the 1908 Act), but it could also insist as a term of its sanction on the dissentient shareholders being protected in manner similar to that under s. 287. Before 1929, then, the court had a discretion as to whether or not dissentients under a scheme of arrangement were to be provided for. Sometimes the court insisted on the inclusion of such a provision and sometimes it did not, although it appears from the reported cases that such provision was more often made than not. Provision was made for such dissentients in *Re Canning Jarrah Timber Co.* [1900] 1 Ch. 708, in *Re Sandwell Park Colliery Co.* [1914] 1 Ch. 589, and also in *Re Anglo-Continental Supply Co., supra*. On the other hand, in *Re Tea Corporation* [1904] 1 Ch. 12, it was held on the facts of the case that the scheme was only made between the company and its creditors and between the company and its preference shareholders, and that a provision made for the benefit of the dissentient class (of ordinary shareholders) must be regarded as in the nature of a gift or concession to them. *Re Standard Exploration Co.* (1902), *The Times*, 21st March, p. 13 (c), 26th March, p. 3 (b), is an instance of a decision where dissentient safeguards were not inserted by the court as a condition of its sanction.

The position of dissentients was thus to some extent regularised and to some extent improved by s. 155, and we have seen that under s. 155 the court was given a discretion on the application by dissentient shareholders either to refuse to allow their shares to be acquired or to impose restrictions on their acquisition. The grounds on which the court will intervene on such an application have been considered in a number of cases since 1929. In *Re Hoare, Ltd.* (1934), 150 L.T. 374, Maugham, J., considered the question at some length and drew two main conclusions from the facts of that case. First, that the mere circumstance that the sale or exchange is compulsory is one which ought not to influence the court, and he criticised the use of the word " expropriation " in this connection as being inapt. Secondly, that *prima facie* the court ought to regard the scheme as a fair one inasmuch as it seemed to him impossible to suppose that the court, in the absence of very strong grounds, is to be entitled to set up its own view of the fairness of the scheme in opposition to so very large a majority of the shareholders who are concerned. This decision of Maugham, J., may be taken as the basis on which the court has made its subsequent decisions, and it is clear enough that the onus of establishing their case rests fairly and squarely on the dissentients.

In *Re Evertite Locknuts* (1938), *Ltd.* [1945] Ch. 220, the dissentients sought to establish the unfairness of the scheme in question on the ground that there had not been a sufficient disclosure of the facts relating to the transferor company and its subsidiaries—with the result that the dissentients were not able to form a sound judgment of the position. Vaisey, J., found that there was no evidence to show that any information was withheld, or that, if so, it was withheld improperly, and he accordingly refused to grant the application. In *Re Press Caps, Ltd.* [1949] W.N. 196, the question turned principally on an entry in the transferor company's balance sheet of " Freehold property—at cost less depreciation £29,708," while it was admitted that the value of the property was about £90,000. The dissentients sought to establish that the scheme was unfair on the ground that the sale to the transferee company was at an undervalue. In the court of first instance it was held that the transferee company was not entitled to acquire the dissentients' shares at the price offered. The Court of Appeal, on the other hand, reversed this decision, and Somervell, L.J., quoted the following words from the judgment of Maugham, J., in *Re Hoare, Ltd., supra* : " Accordingly without expressing a final opinion on the matter, because there may be special circumstances in special cases, I am unable to see that I have any right to order otherwise in such a case as I have before me, unless it is affirmatively established that notwithstanding the views of a very large majority of shareholders, the scheme is unfair." Somervell, L.J., held that the entry complained of was not a valuation of the property. It was " cost less depreciation," and everyone knew that the value of real property had risen in recent years. He also held that the price offered for shares in the transferor company was substantially above the market selling price and that there was evidence that the figure for patents and goodwill in the transferor company's balance sheet was overvalued. He therefore came to the conclusion that the scheme was fair on the facts of the case.

Finally, let us examine the position in *Re Castner-Kellner Alkali Co.* [1930] 2 Ch. 349. This case must be examined in two stages. First of all, the transferor company sold its undertaking to the transferee company and a certain number of dissentients opposed the scheme. Secondly, before the transferee company had served notice on the dissentients to acquire their shares it (the transferee company) became amalgamated with Imperial Chemical Industries, Ltd. The result was that the transferee company could no longer give effect to the scheme as regards the dissentients. It was held that the court had power to determine the terms upon which the shares of dissentient shareholders should be acquired, notwithstanding that since the original offer was made the scheme had been superseded by the later amalgamation which absorbed the transferee company and that the mere fact that the transferee company cannot offer to the dissentients the original shares accepted by the majority makes no difference to the jurisdiction of the court, which is only bound to decide whether the terms are adequate and reasonable (and if not, to substitute such other terms of purchase as, in its discretion, are fair and just). Since the passing of the 1948 Act, however, it seems doubtful whether this would still be the case where the transferee company already holds more than 10 per cent. of the shares or class of shares to be acquired, as in this case the transferee company is bound to offer the same terms to dissentients as were offered to those shareholders who approved the scheme. It may be observed that in *Re Castner-Kellner Alkali Co., supra*, the court did in fact consider that the amount offered to dissentients was too little and ordered an increased amount (in cash) to be paid to the dissentients with interest.

To sum up, then, each case must be judged on its individual merits and the court will only intervene to protect dissentients on an application by them under s. 209 of the 1948 Act if there are very strong grounds on which the court can say that the scheme in question is unfair, despite the opinion of an overwhelming majority of the shareholders affected, and the

onus is on the dissentients to show that such very strong grounds exist. In conclusion it may be pertinent to add an observation as to costs. In *Re Hoare, Ltd., supra*, Maugham, J., observed: "I will say that in cases of this sort, I think a substantial number of dissentients are entitled to submit the matter to the court, and I am not therefore unwilling to say that these applicants may have their costs. I am giving them a small solatium and having given them that solatium, I think I am entitled to say that the respondent company having now got the whole of the shares should pay the costs." In subsequent cases Maugham, J.'s decision on costs has not been followed, but neither have the applicants been penalised in costs. In *Re Evertite Locknuts* (1938), *Ltd., supra*, and in *Re Press Caps, Ltd.* (in the Court of Appeal), the applications were dismissed with no order as to costs.

N. P. M. E.

A Conveyancer's Diary

CONTRACTS TO PURCHASE AND VACANT POSSESSION

THE recent decision in *Re Crosby's Contract* [1949] 1 All E.R. 830, will bear detailed examination, because, on a first reading, it may induce conclusions of a nature more general than are strictly justified. The facts were as follows: By a lease the landlord demised to the tenant a shop and other accommodation forming part of a building, the rest of which consisted of living accommodation over the shop. The term was for twenty-one years and the lease contained an option to purchase in this rather odd form:—

> "... if the tenant shall desire to purchase the fee simple of No. 52, Connaught Avenue ... of which the demised premises form part and shall within seven years from the commencement of the term hereby created give to the landlord three months' notice in writing of such desire then the landlord will upon the expiration of such notice and on payment of [the agreed purchase price, arrears of rent, etc.] convey the said property to the tenant in fee simple. The tenant shall accept without objection the title of the landlord but shall have delivered to him at his own expense such abstract of title as he shall require and the landlord shall be able to furnish."

The flat over the shop was occupied at all material times by the landlord and her husband. Some three years after the date of the lease the tenant purported to give notice to the landlord to the effect that he elected and agreed to purchase from her the reversion in fee simple of the property at the price and on the other terms and conditions mentioned in the lease. This notice was disputed by the landlord, apparently on the ground of the reference it contained to the reversion, and, for reasons which do not fully appear in the report, it was eventually withdrawn by the tenant. The next thing that happened was that the landlord, who together with her husband was anxious not to leave the flat, granted her husband a lease of the flat for a term of twenty-one years at what she described, in an affidavit filed in the proceedings which followed, as a full rack-rent. Shortly after the grant of this lease the tenant served a second notice exercising his option under the lease of the shop, and no question was raised either as to the form or the validity of this second notice. But in the course of correspondence between the parties on the question of title the tenant became aware of the grant of the lease of the flat, and on his objection the landlord took out a summons for a declaration that the tenant was bound to accept the conveyance of the freehold in the property subject to the lease of the flat, and further that the tenant was not entitled to vacant possession of the whole property.

The option had been duly registered as a land charge, and nothing turned on this; the sole question before the court was whether, in the circumstances, the tenant was entitled to a conveyance of the property with vacant possession of the whole or not. This question was decided in the tenant's favour.

In reaching this conclusion, Romer, J., proceeded by stages. The first stage (and this is the important one from the general point of view) was to determine whether, apart from the concluding sentence of the option clause, a term should be implied that on the exercise of the option and the completion of the purchase in accordance with its terms, vacant possession would be given. This was held to be the case, and reliance was placed on two authorities as tending to this conclusion. The first was a passage from Williams on Vendor and Purchaser (4th ed.), where in a footnote on p. 201 it is stated that "it is apprehended that, where land is sold under a contract expressly or impliedly promising to convey the fee simple free from incumbrances, it is *prima facie* a term of the contract that the purchaser shall on completion be put into actual (and not constructive) possession ..." As to this, I think that there is a distinction of some importance between the hypothetical circumstances postulated in Williams ("free from incumbrances") and the circumstances in *Re Crosby's Contract, supra*, where the option clause spoke merely of a conveyance of the fee simple. This distinction should not be overlooked if this part of the decision in the instant case has to be applied to other facts.

The other authority was a passage from the judgment in *Cook* v. *Taylor* [1942] Ch. 349, where after a reference to the statement in Williams already mentioned, Simonds, J., went on: "... it would be strange if, the vendor saying nothing about the matter which lay within his knowledge and not within the knowledge of the purchaser, the purchaser were to find himself purchasing a property subject to a tenancy of which he could know nothing. Therefore I hold as a matter of law upon a contract of this character that there is the implied term that vacant possession shall be given upon completion." But this statement is not really as authoritative as it appears, at least for the purpose required in the case under review, as a glance at the facts and the decision will show; for in the first place the particulars in *Cook* v. *Taylor* expressly stated that vacant possession would be given, and in the second place it had already been decided that an implication that the sale was with vacant possession should be made, on the ground that when the purchaser looked over the property it was in fact vacant. The passage from the judgment in *Cook* v. *Taylor* quoted above would, accordingly, appear to be *dictum* and no more.

To sum up this part of the decision, it should not be assumed, on its authority, that whenever there is a contract for the sale of land with no mention of vacant possession (whether the contract is an independent contract or an option appended to some other instrument) such a term will be implied in the purchaser's favour. The tendency would certainly be that way, but the question is one of construction of the contract or option clause as a whole.

And that, to be fair, was the view taken by Romer, J., in *Re Crosby's Contract, supra*, for although he analysed the option clause in two stages, taking each of its sentences separately, his conclusion was one on the clause as a whole. As to the latter part of the clause, the decision was that it bound the purchaser to accept the state of the vendor's title as it was when the lease of the shop was granted, but did not compel him to take the property subject to a defect which the landlord had herself deliberately created after the grant of the lease. This is a fair decision on the facts, and the only comment that can usefully be made on this part of the case is to draw attention to the inconvenience that may result to the grantor of the option if this form of clause is adopted. Its effect is to sterilise the land in his hands for various purposes over the period of the option's currency, and in counting up the purposes for which land may be so sterilised one must not, in these days, forget the planning legislation and its brood of planning charges.

"A B C"

Landlord and Tenant Notebook

NEW LEASE OF CONTROLLED PREMISES: RENT

THE applicant tenant in *Rose* v. *Hurst*, reported at p. 319, *ante*, carried on, on controlled premises, the business of a greengrocer, and had qualified for a new lease, in lieu of compensation, for loss of goodwill. Under the expiring lease, granted in 1928 for a twenty-one year term, the rent was £90 a year and, as the premises included living accommodation and the rateable value was within control limits, the applicant was protected by the Rent and Mortgage Interest Restrictions Act, 1939. He and the landlords having agreed that £230 a year would be the proper rent under a lease ordered under the Landlord and Tenant Act, 1927, s. 5, and also agreed to a seven-year term for such lease, a grant on those terms was arranged subject to the question of law whether a rent exceeding that of the standard rent could be fixed by a tribunal.

It is likely that the decision in *R.* v. *Paddington and St. Marylebone Rent Tribunal; ex parte Bedrock Investments, Ltd.* [1948] 2 K.B. 413 (C.A.), in which the aptly named applicants established that a tribunal under the Furnished Houses (Rent Control) Act, 1946, had no power to fix a rent below the amount permitted by the Increase of Rent, etc., Restrictions Acts which happened to apply to the premises concerned, suggested the argument. But in that case there was some clarification of the position in the shape of s. 7 of the 1946 Act which, subject to exceptions, provides that nothing in that statute shall "affect" any provisions of the Rent, etc., Restrictions Acts.

There is no corresponding provision delimiting spheres of operation in the Landlord and Tenant Act, 1927, Pt. I, but the court (agreeing with the county court, which had incidentally made the term fourteen years) came to the conclusion that the applicant had "elected" to apply for a new lease under that Act and that, this being so, that Act must govern the whole matter and the provisions as to standard rent did not apply.

Denning, L.J., harmonized law and common sense by mating two points. One is that when the Landlord and Tenant Act, 1927, was passed rent control was already in existence and the Act then in force must have been clearly in the mind of the Legislature. I do not know whether the words "or be deemed to have been" should themselves be implied here; but it is right to say that if by any chance Parliament omitted, in 1927, to give rent control a thought, it did, when providing for some de-control in 1933, direct its attention to the case of a statutory tenant who might otherwise be qualified for a new lease (see the Rent, etc., Restrictions (Amendment) Act, 1933, s. 1 (6)). In the present case, as the learned lord justice pointed out, the specific provision in the Landlord and Tenant Act, 1927, was inconsistent with the general provision in the other Act. The specific provision would be that of s. 5 (2): "the tribunal . . . may . . . order the grant of a new tenancy for such period (being a term of years absolute) not exceeding fourteen years and on such terms as the tribunal may determine to be proper . . . Provided that the rent fixed . . . shall be such rent as the tribunal may determine to be the rent which a willing lessee other than the tenant would agree to give and a willing lessor would agree to accept . . . irrespective of any goodwill, etc." The general provision would be that of s. 1 (1) of the Increase of Rent, etc. (Restrictions) Act, 1920: "if the increased rent . . . exceeds by more than the amount permitted under this Act the standard rent . . . the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable . . ."

The other point was that, by obtaining a new lease, the tenant had greater security than he would have had by merely holding over as a statutory tenant, and acquired the power to assign. When, on 20th September, 1947, at the request of readers, I discussed the possibility of landlord and tenant of combined premises negotiating a new tenancy at a higher rent (91 SOL. J. 502), I drew attention to this "greater security" factor, with special reference to the risk, from the tenant's point of view, that the landlord might seek possession on the alternative accommodation ground and that the alternative accommodation found to be available would have no shop. Since then the risk has, I think, on the one hand increased by reason of the fact that alternative accommodation has become less scarce; on the other hand, those relying on *Middlesex County Council* v. *Hall* [1929] 2 K.B. 110 (order made though alternative accommodation would not permit of carrying on a teashop business, which the tenant did on the premises claimed) should pay some regard to *Warren* v. *Austen* [1947] 2 All E.R. 185 (C.A.) (see 91 SOL. J. 895). In that case a county court judge refused an order after finding that if the defendant moved to the proffered premises he would lose two advantages afforded by the premises claimed; his five children would not have a playground close at hand, and he would not be able to augment his meagre income by taking paying guests. It was not too clear whether the refusal was based on the unsuitability of the alternative accommodation or on the unreasonableness of making an order for possession; but the Court of Appeal pointed out that the reasons given in fact dealt with both. True, if the county court judge had, first by misdirecting himself on the issue of suitability, and then basing his conclusion on the question of reasonableness on the result of his finding, decided to refuse an order, the judgment could not stand. But the language used did not suggest that the reasoning had been on such lines.

I mention this case because those concerned with such matters would do well not to assume that the availability of suitable living accommodation elsewhere will automatically deprive a statutory tenant of combined premises of protection; in these, as in other cases, there is always the "overriding requirement of reasonableness" (*Cumming* v. *Danson* (1942), 112 L.J.K.B. 145 (C.A.)).

The difference between standard rent and "proper" rent in the recent case was indeed considerable. From reports at present available, it is not easy to say whether the decision implies decontrol once and for all. The tenant cannot simultaneously enjoy a double status, and a good deal of water may be expected to flow under London Bridge in the next fourteen years. But if when a term granted under the Landlord and Tenant Act, 1927, s. 5, ends (and such a term need not be a fourteen-year one), the premises being of the combined variety, the tenant (who cannot demand a further new tenancy: subs. (8)) decides that he would like to invoke the protection of the Increase of Rent, etc., Restrictions Acts, or what may be left of them, it seems to me that a problem may arise (*a*) whether the security of tenure provisions apply and, if so, (*b*) what would be the standard rent.

R. B.

SOCIETIES

The Rt. Hon. Lord Justice Evershed will take the chair at the Annual General Meeting of the BARRISTERS' BENEVOLENT ASSOCIATION to be held in the Niblett Hall, Inner Temple, on Wednesday, 25th May, at 4.30 p.m.

Sir Douglas T. Garrett, President, will take the chair at the 132nd Annual General Court of the LAW ASSOCIATION, to be held at The Law Society's Hall (Council Chamber), on Monday, 30th May, at 2 p.m. All members of the profession will be welcome.

An Ordinary Meeting of the MEDICO-LEGAL SOCIETY will be held at Manson House, 26 Portland Place, W.1 (Tel.: Langham 2127), on Thursday, 26th May, at 8.15 p.m., when a paper will be read by Major A. K. Mant, M.R.C.S., L.R.C.P., on "The Medical Services in Ravensbruck Concentration Camp."

HERE AND THERE

JUDICIAL SALARIES

Two years ago two monosyllables were spoken in the House of Commons but little calculated to bring comfort or relief to the new poor of the English judiciary. Mr. Marlowe, K.C., the Conservative Member for Brighton, had put to the Chancellor of the Exchequer the question whether he would introduce legislation to increase the salaries of the High Court judges or afford them tax relief, in view of the fact that the salaries now being paid were fixed in relation to the cost of living in 1832. To this Mr. Glenvil Hall, Financial Secretary to the Treasury and likewise a member of the Bar, answered briefly and unequivocally: "No, sir." Next came a burst of enfilading fire from Mr. Hector Hughes, K.C., on the Socialist benches: "Is the Minister aware that these salaries are much less than are paid to high business executives and are disproportionate to the great services rendered by the judges?" But Mr. Glenvil Hall, secure in the Ministerial entrenchments, fired no shot in reply. Much water has flowed under Westminster Bridge and past the Temple Stairs since then, and rosy fingered Dawn now has her hand upon the portals of the east promising a glorious new day to the long-suffering sages of the law. The sun of justice will arise and shine blazing, like that celebrated nobleman, the Duke of Plaza Taro, in the lustre of unaccustomed pocket money. No longer will learning be its own, and almost its only, reward. Plain living will not then be the nearly compulsory concomitant of high thinking. The Attorney-General recently informed the Bar that he hoped that before long it would be possible to raise the salaries of the judges. And now a very different tune is sung in the Palace of Westminster. Mr. Marlowe reiterates his former question and receives not a tersely negative reply, but a soothing assurance that "My right hon. and learned friend has this matter under consideration in consultation with the Lord Chancellor." "As the matter has been so long delayed, can some indication be given of the steps which will be taken?" "Legislation will be necessary, and I think I can promise that it will not be long delayed. It will certainly be this year." Thus that dialogue of comfort. And to make doubly sure, Mr. E. Fletcher called up the reinforcements of Mr. Hector Hughes's argument about the high business executives, which now was received not in unresponsive silence, but with the assurance that "obviously all those points will be taken into consideration when a decision is arrived at."

PUT AND TAKE

DIVERS reflections occur to the thoughtful as they view the paradoxical operation of the game of put and take (or is it snakes and ladders?) that the Government plays with salaries. Of a nominal £5,000 a year, the judges retain effectively for their use and enjoyment and the support of their dependants about £2,400. (Let it be remembered that formerly these salaries were free and clear of all taxes and deductions: 49 Geo. 3, c. 127.) Now suppose the Government in a mood of reckless abandon and heart-warming generosity were to double the judges' salaries, what would it mean to the judges in terms of actual disposable assets? About another £1,000 a year. Very agreeable, and even to-day adequate to support, say, the luxury of employing a good cook, were such a being available, but the benefit would be somewhat out of proportion to the gesture. Another point is that in former times it was possible for an opulent leader of the Bar to put by savings sufficient to cushion his latter days when he should be, as Lord Rosebery said of the status of ex-Lord Chancellors, "a shabby old gentleman with £5,000 a year." Now neither industry in the Temple nor thrift by the hearth will avail to fill a money box into the bottom of which the Finance Acts have bored so enormous a hole. *Per contra*, however, it may be said that the diminished keepings of a £20,000-a-year K.C.—say, £4,200 or thereabouts—constitute but small inducement to stay at the Bar rather than place his talents at the public's disposal in a judicial capacity. His keepings are a mere £1,800 a year more than those of his lordship, who enjoys the additional advantage of substantial pension rights when he retires from work to contemplation.

1799 AND ALL THAT

THE development of judicial remuneration is extremely interesting even if one refrains from exploring the intricacies of mediæval accountancy, when tuns of wine and cloth for robes figured among the receipts of the judges. Leaving aside the Lord Chancellor and the Chief Justices, whose patronage in appointments to offices represented not the least of their assets, we find the puisnes before the accession of George I in 1714 received £1,000 a year. The House of Hanover brought them a 50 per cent. rise, making £1,500. In 1758 this was deemed "inadequate to the dignity and importance of their offices" and up they went to £2,000. In 1779 a surplus from the stamp duties encouraged the authorities to make it £2,500 and, just before the close of the century, the year 1799 saw the judges touch £3,000 a year with £2,000 pension rights. Ten years later the recognition of the increased cost of living resulting from the Napoleonic wars brought them up to the £4,000-a-year level. But better was to come, and in 1825 they touched their high-water mark with £5,500. William IV came to the throne in 1830 and the tide turned. The first year of his reign saw his judges the poorer by £500 and so it has remained ever since, if one discounts the black year, 1931, when the Government of the day, not having the fear of the Constitution before their eyes, docked the judges 20 per cent. of their salaries as if they were so many Civil Servants. Quite apart from currency depreciations and indirect taxes, it is both interesting and depressing to consider that, minus income tax and sur-tax, the amount which a judge actually receives in 1949 is less than his predecessors received in 1799. Let's all go back a hundred and fifty years to our 1799 pay-packets—business executives, trade unionists and the rest. Or not?

RICHARD ROE.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Town and Country Planning Act, 1947

Sir,—In January last I sent you a letter for publication regarding the above matter, in which I called attention to the prospective depreciation of site value of fully developed land [*ante*, p. 71]. In that letter I stated that when rebuilding becomes necessary loss of site value may be anticipated in consequence of the powers contained in the Act, whereby existing building byelaws can be suspended and whereby a policy entailing drastic restriction of the present profitable usage of fully developed building sites will be enforced. In order to obtain an official view regarding the admissibility of such claims, a letter was sent to Sir Robert Fraser, of the Central Land Board, on the 28th February last. At the end of March the following reply was received, signed by Mr. L. W. Homan, the Assistant Secretary of the Central Land Board:—

"Sir Robert Fraser has asked me to reply to your letter of the 28th February, asking whether claims against the £300,000,000 for the depreciation in the value of land by virtue of the Town and Country Planning Act, 1947, can be made in respect of restrictions on permissible infringement of light which may be imposed by local authorities. I am sorry that there has been a delay in replying to your letter.

The statutory definition of when an interest is to be regarded as depreciated in value for the purpose of receiving payment out of the £300,000,000 is given in s. 61 of the Act. The Board will assess individual claims in accordance with this section, but, in their view, it would be unwise for them in advance of the assessment of individual cases to state how they would propose to interpret the section in its application to a broad class. Such action would obviously prejudice the Board's decisions on individual cases and a further objection is that any individual determination by the Board is appealable to an arbitrator and that a further appeal on any question of law lies to the courts. Any construction therefore that the Board might place on the Act with reference to a claim remains subject to the review and direction by the courts.

In our view, therefore, it must remain the responsibility of your inquirer, as claimant, to decide whether, having regard to the wording of s. 61, the possibility to which he refers affords grounds for claim."

Presumably the best course for those who are in doubt as to the propriety of submitting a claim, in respect of prospective depreciation of site value in any particular case, would be to include a formal claim to the Central Land Board and to await developments. I understand that it is not necessary to state in the claim the precise amount which the claimant considers he is entitled to. It must be remembered that the last date for submitting claims is 30th June, and that after that date no claims will, under any circumstances, be considered.

Temple, E.C.4. JOHN SWARBRICK.

NOTES OF CASES

COURT OF APPEAL

SILICOSIS: EXCLUSION OF PERIOD OF WAR WORK

Leese *v.* National Coal Board

Bucknill, Cohen and Denning, L.JJ.
17th March, 1949

Appeal from Hanley and Stoke-on-Trent County Court.

After twenty-four years' work in a colliery, the appellant workman began to suffer from his chest. Advised by his doctor to leave the colliery, he took up A.R.P. work in September, 1939, which he kept until in 1940 he obtained work in a Royal ordnance factory. He gave evidence that he took the A.R.P. work because it attracted him and he had some training for it; that he took the work in the ordnance factory because it involved working in the open; that considerations of health alone dictated his choice of work on leaving the colliery. In April, 1948, he was certified as suffering from silicosis. By proviso (*b*) of art. 4 of the Various Industries (Silicosis) Scheme, 1931, no compensation is payable under the Scheme "where the workman has not been employed in the processes . . . at any time within the five years previous to the date of injury." By art. 2 of the Various Industries (Silicosis) Amendment (No. 2) Scheme, 1946, "there shall be disregarded" for the purposes of the above provision "any period between 3rd September, 1939, and 31st March, 1946, during which a workman has been engaged in any . . . employment" other than work to which the Scheme of 1931 applies "which the workman would not have undertaken but for a state of war." The county court judge held that the workman was not within the protection of art. 2 of the Scheme of 1946 and so not entitled to compensation. The workman appealed. (*Cur. adv. vult.*)

BUCKNILL, L.J., said that the test to be applied by the court in deciding whether or not a workman would have undertaken work but for a state of war was an objective test relating to the work itself and not the subjective test of his motives. The true construction of the relevant words was "work which the workman undertook wholly or partly because there was a state of war at the time when he undertook it." Accordingly the question for the county court judge to decide was whether the fact that there was a state of war wholly or partly caused him to undertake it. As the appellant workman had deliberately undertaken work which was available to him because of a state of war, the state of war must partly have caused him to undertake the work. He was accordingly within the protection of art. 2 of the amending Scheme of 1946, properly construed, and so entitled to compensation.

COHEN and DENNING, L.JJ., agreed.

Appeal allowed.

APPEARANCES: *Beney*, K.C., and *Dare* (*Simmonds, Church Rackham & Co.*, for *McKnight & Ryder*, Hanley); *Sunderland* (*The Solicitor, National Coal Board*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COAL MINE: SAFETY MEASURE "REASONABLY PRACTICABLE"

Edwards *v.* National Coal Board

Tucker, Asquith and Singleton, L.JJ.
21st March, 1949

Appeal from Hallett, J.

The plaintiff's husband, employed in a colliery, was killed by a fall of the side of a travelling road in a mine, which was due to a latent defect. By s. 49 of the Coal Mines Act, 1911, the sides of a travelling road "shall be made secure." Section 102 (8) relieves mineowners of civil liability for a breach of the Act if "it was not reasonably practicable to avoid" it. Hallett, J., held the defendants not guilty of negligence, and that it was not reasonably practicable to prop and line all the travelling roads in all their mines. He therefore dismissed the action, and the plaintiff appealed. (*Cur. adv. vult.*)

TUCKER, L.J., said that it was argued for the plaintiff that nothing short of some external interference by some unauthorised third person, or some occurrence which could not reasonably be anticipated, could excuse the breach of the absolute duty, and that matters which were within the control of the mineowner, such as cost, inconvenience and loss of profits, were irrelevant. Alternatively, if such matters as cost could be considered, the court could only look at the particular roadway in which the accident had happened. He could not accept the submissions of either side in their entirety. The defendants' contention, that was Hallett, J.'s decision, left the miner no better off than he was at common law; in effect it made the taking of reasonable care the sole test. On the other hand, though, no doubt, it was necessary to look primarily at the particular part of the particular mine with which the court was concerned, it was necessary and proper to view it in relation to the totality of obligations resting on the mineowner. He did not hold the view that cost must necessarily always be excluded as an element to be weighed in the balance. In every case it was the risk that had to be weighed against the measures necessary to eliminate the risk. The greater the risk, no doubt the less would be the weight to be given to the factor of cost. The burden which lay on the defendants of discharging the onus of proof was a heavy one, and they had called no witness qualified to assist the court to visualise the situation nationally from the viewpoint of the monopoly owner. The court was left in ignorance as to the practicability or otherwise of the measures which were said to constitute the only way to ensure security—artificially to support all roads in mines. As for the local angle, the evidence of the defendants' officials on the spot showed that they had never even applied their minds to the point until questioned in court. The defendants had failed to discharge the burden which lay on a defendant under s. 102 (8) where there had been a clear breach of s. 49. The appeal would be allowed. The court was not concerned with the question whether or not sufficient evidence to warrant a decision in favour of the mineowner might be presented in future cases.

ASQUITH and SINGLETON, L.JJ., agreed.

APPEARANCES: *Havers*, K.C., and *Ryder Richardson* (*Theodore Goddard & Co.*, for *T. S. Edwards & Son*, Newport); *Gardiner*, K.C., and *Micklethwait* (*Preston, Lane-Claypon & O'Kelly*, for *Colborne, Coulman & Lawrence*, Newport).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

INVITOR AND INVITEE: FORECOURT ADJOINING HIGHWAY

Jacobs and Another *v.* London County Council

Tucker, Asquith and Singleton, L.JJ.
24th March, 1949

Appeal from Ilford County Court.

The plaintiffs, a husband and wife, lived on a housing estate belonging to the defendant council. Wishing to visit a chemist's shop on the estate the wife had to cross a forecourt, occupied by the council, between the public highway and the shop. On the forecourt she tripped and fell over a stopcock which projected because the stones and cement round it had subsided. The county court judge held that the wife was an invitee on the principle in *Indermaur* v. *Dames* (1886), L.R. 1 C.P. 274, that the condition of the stopcock was a nuisance, and due to lack of reasonable care in inspection, and that the plaintiffs were entitled to damages. The council appealed.

TUCKER, L.J.—ASQUITH and SINGLETON, L.JJ., agreeing—said that the case raised in acute form the problem which had troubled the courts from time to time in cases of this sort. *Fairman* v. *Perpetual Investment Building Society* [1923] A.C. 74, decided by the House of Lords, was now the governing authority covering this branch of the law. Their lordships there found that a tenant's lodger was only a licensee of the landlords on the stairs, though an invitee of the tenant, and that there was nothing to support a suggestion that the tenant was authorised by the landlords to invite her. He (Tucker, L.J.) thought himself bound by *Fairman's* case, *supra*. He found it impossible to distinguish the cases of a person injured while visiting a shop, professional premises, or a residential flat. *Fairman's* case, *supra*, covered all such cases, and in that case the landlord had not a sufficient interest in the visit of the injured person to bring the case within the law on damages. As for nuisance, the authorities were quite clear that the plaintiff could only recover if she was at the time of the accident using the highway. In the present case it was obviously a matter of inches, but on the authorities it was clear that the wife had not met with her accident in the course of using the highway. She had deliberately and intentionally left it for the purpose of reaching some place not on it. Appeal allowed.

APPEARANCES: *H. E. Francis* (*Shaen, Roscoe & Co.*); *Monier-Williams* (*J. H. Pawlyn*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COUNTY COURT: APPEAL: CLAIM LESS THAN £20

Eric Gnapp, Ltd. *v.* Petroleum Board

Tucker, Asquith and Singleton, L.JJ. 28th March, 1949

Appeal from Barnet County Court.

The plaintiffs, a company of garage proprietors, brought an action against the defendant board claiming (1) £1 3s. 4½d. money alleged to have been overpaid under a contract, and (2) £200 damages for the board's refusal to sell them more petrol. The county court judge dismissed the action, and the plaintiffs now appealed. Section 105 of the County Courts Act, 1934, which gives the right of appeal from the county court, contains the proviso "that, without the leave of the judge, there shall be no appeal—(*a*) in any action founded on contract or on tort (other than an action for the recovery of land or an action in which the title to any hereditament is in question) where the debt or damage claimed does not exceed £20." The defendants raised the preliminary objection that no leave had been obtained to appeal on the issue relating to the £1 3s. 4½d.

TUCKER, L.J.—ASQUITH and SINGLETON, L.JJ., agreeing—said that the plaintiffs were a party aggrieved by the judgment of the county court judge, which was, according to the records, a simple judgment covering the whole of the claim. The action was founded on both contract and tort, and the debt and damage together far exceeded £20. It was, however, argued that the proviso to s. 105 should be read in such a way as to require an appellant to obtain leave of the judge to appeal if any one of the causes of action which went to make up the totality of his claim was for an amount not exceeding £20. That was not the proper interpretation to be put on the proviso. The words "in any action" were decisive in favour of the plaintiffs. It would have been easy to limit the right of appeal without leave to causes of action, but the words were "in any action"; and the effect of that was that if in any action the debt plus damage exceeded £20, the plaintiff was entitled to appeal without leave. Objection overruled.

APPEARANCES: *King-Hamilton* (*Hiscocks*); *Milmo* (*A. Davies*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PURCHASE TAX: INFORMATION RELATING "TO THE PURCHASE" OF GOODS

Customs and Excise Commissioners *v.* Ingram

Evershed, L.J., and Wynn Parry, J. 5th April, 1949

Appeal from Finnemore, J.

The defendant had traded as a wholesaler dealing in goods subject to purchase tax. He was called on by the plaintiff commissioners, acting under s. 20 (3) of the Finance Act, 1946, to produce books and accounts and names and addresses of those from whom goods were bought, and to whom they were sold, by him. He failed to produce those particulars, alleging that the records were lost. The plaintiffs took out a summons under s. 14 (2) (*d*) of the Crown Proceedings Act, 1947, for an order for their production. The Master made an order as prayed, which Finnemore, J., confirmed. The defendant now appealed. By s. 20 (3) of the Act of 1946, "Every person concerned with the purchase or importation of goods . . . shall furnish to the commissioners . . . information relating to the goods or to the purchase or importation thereof . . . ."

EVERSHED, L.J.—WYNN PARRY, J., agreeing—said that the only point requiring decision was whether, as contended on behalf of the commissioners, "information relating . . . to the purchase" of goods meant information not only as to the purchase of goods but also as to their sale. On the natural reading of s. 20 (3) the information required would seem only to relate to the purchase of goods; but s. 67 (2) provided that the part of the Act relating to purchase tax was to be construed with the part of the Finance (No. 2) Act, 1940, by which purchase tax was first introduced; and s. 41 (1) of the Act of 1940 defined "purchase" as meaning "any contract which is a contract of sale within the meaning of the Sale of Goods Act, 1893 . . ." It was therefore impossible to limit the information to be given under s. 20 (3) to the purchase of goods as the plaintiff had contended. The information that could be required under that subsection extended to any contract of sale in which the person required to give information was either a buyer or a seller. Appeal dismissed.

APPEARANCES: *Marshall*, K.C., and *Michael Lee* (*Platts Mills* with them) (*Stanley Moore & Partners*); *H. L. Parker* and *Littman* (*Solicitor of Customs and Excise*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

MARRIAGE SETTLEMENT: ASSIGNMENT TO TRUSTEES OF INTEREST IN RESIDUE OF FATHER'S ESTATE: SUBSEQUENT APPOINTMENT UNDER SPECIAL POWER IN FATHER'S WILL: WHETHER EXPECTANCY OF SUBSEQUENT APPOINTMENT INCLUDED IN ASSIGNMENT

***In re* Dowie's Will Trusts; Barlas *v.* Pennefather**

Roxburgh, J. 6th April, 1949

Adjourned summons.

By his will made 1st July, 1921, the testator, who died on 17th November, 1922, directed his trustees to hold the residuary estate in trust for his two daughters, M C and L D, in equal shares for life and, as regards M C, after her death for all or such of her children or remoter issue in such manner as she should by deed or will appoint, with remainder over to her children in case of her failure to appoint. M C's daughter, V P, by her marriage settlement dated 24th September, 1936, assigned to the trustees of the settlement "all that the share and interest of [V P] of and in the residuary trust fund under the will of [the testator] . . . upon trust that the trustees shall as to those parts of the premises to which [V P] is entitled in possession immediately and as to the residue of the premises when her expectant interests therein respectively shall or may fall into possession call in or procure the transfer or payment thereof to them." On 15th June, 1940, M C, in exercise of the power given her in the testator's will, appointed V P to a share in the testator's residuary estate. M C died on 29th July, 1947. The court was asked to determine whether the interest appointed by M C was comprised in the property assigned by V P to the trustees of the marriage settlement.

ROXBURGH, J., said that it followed from the observations of Lord Romer in *Muir* v. *Muir* [1943] A.C. 468, 485, that, though the interest created by the appointment did not arise until the appointment was executed, when it did arise, the beneficiary took his interest by virtue of the instrument creating the power or, in other words, the will. The interest which arose under the appointment was a different interest from that which the beneficiary had in default of an appointment, and accordingly at the date of the marriage settlement, the interest which the beneficiary had under the expectancy of taking under the appointment was not a present interest. The question was, then, whether the marriage settlement had to be construed as assigning present interests only or also the expectancy of appointments. As a matter of construction, an assignment would *prima facie* be limited to interests present at the date of the deed, but, in view of the express reference to expectant interests in the deed, the *prima facie* construction did not apply to the present deed, which had to be construed as including V P's expectant interest in the residuary trust fund which she subsequently obtained under the appointment. *Lovett* v. *Lovett* [1898] 1 Ch. 82 distinguished.

APPEARANCES: *Stranders* (*Simon, Haynes, Barlas & Cassels*); *Robert S. Lazarus* and *T. A. C. Burgess*, *Tonge* (*Monro, Saw & Co.*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: OBVIOUS OMISSION OF WORD: IMPLICATION

***In re* Birkin, deceased; Heald *v.* Millership**

Harman, J. 5th May, 1949

Adjourned summons.

The testator, J B, by his will, made in 1946, written in his own hand, gave a number of pecuniary legacies, each of £200, to his nephews and nieces therein named, children of his brother and sisters. He then proceeded as follows: "Also I give to the following £100 each," and, after naming certain strangers, the will proceeded: "All nephews and nieces of my late sister Lizzie (Mrs. Millership)" without naming them. He gave his residuary estate equally between his wife and his three children, and died in 1947. The question raised was whether the will ought not to be construed as if the word "children" had been included before the words "of my late sister Lizzie." The testator had given legacies to all his own nephews and nieces except two infant children of a half-sister and the nephews and nieces of his late sister were also his own with the addition of his own children.

HARMAN, J., said he declined to believe that when a man intended to benefit his own children he described them as the nephews and nieces of his late sister, nor could he have intended to benefit the same nephews and nieces over again. He must have meant to benefit by that bequest the children of his

sister Lizzie, who were his own nephews and nieces. There were five of them and he might well have been uncertain of all their names. The only difficulty in reading the will literally was that he would cut out the children of a half-sister, two infant children. It was argued on their behalf that to insert a word was to make a new will for the testator. On the other hand he was entitled to look at the whole of the will and the circumstances of the testator's family and of the beneficiaries named in the will, and if, looking at those extrinsic circumstances, he was convinced of the testator's real intentions, he was entitled to read the words as they should be rather than as they were, and to make the will as the testator must have written it, though for some reason one or two words had dropped out. It was a matter of principle, which had recently been discussed by Vaisey, J., in *In re Smith; Veasey v. Smith* [1948] Ch. 49, when the learned judge took a step bolder than any step he (his lordship) was taking, for there there was a doubt as to what benefit a testatrix intended to confer on her husband. That judgment referred to the authorities, all to be found in the first few pages of Hawkins on Wills, where the law was fully summed up. He held that he was entitled to infer that the word "children" had dropped out, and by implication to read it back into the will.

APPEARANCES: *C. V. Rawlence; W. J. C. Tonge; P. J. Duffy* (*Taylor, Jelf & Co.*, for *Hopkin & Son*, Mansfield, for all parties).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time :—
Iron and Steel Bill [H.C.] [10th May.

Read Second Time :—
City of London (Various Powers) Bill [H.C.] [12th May.
Commonwealth Telegraphs Bill [H.C.] [12th May.
London County Council (Wood Lane Site) Bill [H.L.] [12th May.
Representation of the People Bill [H.L.] [12th May.
Swindon Corporation Bill [H.C.] [12th May.

Read Third Time :—
Landlord and Tenant (Rent Control) Bill [H.C.] [10th May.
Lands Tribunal Bill [H.C.] [10th May.
Slough Corporation Bill [H.L.] [10th May.

In Committee :—
Coal Industry Bill [H.C.] [12th May.
Patents and Designs Bill [H.L.] [10th May.

B. DEBATES

On the Report Stage of the Agriculture (Miscellaneous Provisions) Bill, LORD CRANWORTH moved to add a new subsection to cl. 9 ("Minister's right to certain tenants' compensation on giving up requisitioned land"). The noble lord said that as it stood cl. 9 enabled the Minister, on giving up a farm of which he had taken possession, to retain the tenant's right to compensation, but it did not seem to provide for the possibility of compensation to the landlord from the Minister for dilapidation, deterioration or damage. Lord Huntingdon had said he thought there was this right, but the Central Landowners' Association had taken counsel's opinion, which was to the effect that the landlord's right to counter-claim was provided in the Compensation (Defence) Act, 1939, but that did not give as full rights of claim to the landlord as were provided by ss. 58 and 59 of the Agricultural Holdings Act, 1948, from which Lord Cranworth understood the Ministry derived their claim for tenant right. LORD HUNTINGDON, in reply, said that it had been decided that it was only fair that the Minister, when he gave up requisitioned land, should have the right to get back from the landowner the value of cultivations and so on which had been carried out. Lord Cranworth's doubt as to the landlord's right to counter-claim against the Minister was covered by cl. 9, which placed the Minister "in all respects as if (he) . . . had throughout the period of such possession been in possession by virtue of a contract of tenancy." It was the custom whenever tenant right was claimed to set off against it any deterioration of the land, and this would apply equally to the Minister when he claimed tenant right. He had been assured that even if there were any doubt about the effect of cl. 9, the Compensation (Defence) Act, 1939, would operate, s. 2 (1) (*b*) of which provided that compensation equal to the cost of making good any damage done during the period of possession by the Minister would be payable. The right to compensation covered not only dilapidations, but deterioration of the land, as by fouling, damage to cropping, and so on. The amendment was withdrawn.

[12th May.

C. QUESTIONS

LORD TANKERVILLE asked whether it was a fact that succession duty on an annuity or life interest not given free of duty had to be paid out of the net income of the beneficiary after deduction of income tax and sur-tax (if any), and if so, whether it was the intention of the various Finance Acts that this should be the case. LORD PAKENHAM replied that there was no provision in law under which succession duty payable by an annuitant or life tenant in such circumstances could be deducted in computing his income for income tax and sur-tax purposes, and there could be no presumption that Parliament intended otherwise.

[10th May.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—
Airways Corporations Bill [H.C.] [11th May.

To provide for the merger of the British South American Airways Corporation with the British Overseas Airways Corporation; to authorise the appointment of an additional deputy chairman of the British Overseas Airways Corporation; and for purposes connected with the matters aforesaid.

Ministry of Health Provisional Order (Chichester) Bill [H.C.] [13th May.

To confirm a Provisional Order of the Minister of Health relating to the City of Chichester.

Ministry of Health Provisional Order (Macclesfield) Bill [H.C.] [11th May.

To confirm a Provisional Order of the Minister of Health relating to the Borough of Macclesfield.

Ministry of Health Provisional Order (Morley) Bill [H.C.] [11th May.

To confirm a Provisional Order of the Minister of Health relating to the Borough of Morley.

Ministry of Health Provisional Order (South Molton) Bill [H.C.] [13th May.

To confirm a Provisional Order of the Minister of Health relating to the Borough of South Molton.

National Health Service (Amendment) Bill [H.C.] [11th May.

To amend the National Health Service Act, 1946, and the National Health Service (Scotland) Act, 1947, and otherwise to amend the law in relation to services provided under the said Acts.

Read Second Time :—
Ireland Bill [H.C.] [11th May.
London County Council (Money) Bill [H.C.] [9th May.

Read Third Time :—
Bolton Corporation Bill [H.C.] [12th May.
British Film Institute Bill [H.C.] [13th May.
Consolidation of Enactments (Procedure) Bill [H.L.] [13th May.

B. DEBATES

On the Second Reading of the Ireland Bill, the PRIME MINISTER said that Eire had, under the provisions of the Statute of Westminster, a perfect right to make the decision to leave the Commonwealth. But our propinquity and the large numbers of people of Irish birth living and working in this country and their continual passage to and fro would have involved a great expenditure in men and money if it had been necessary to treat them as aliens. He was aware that hitherto international law had not known the status which it was proposed to confer on Eire citizens in this country, but we were moving into a time when various new relationships might be created. The name Republic of Ireland had been adopted in the Bill simply because the Eire Legislature had adopted that name, and it would be useless to refer to the new State by a name other than that which it had itself adopted. There had been a good deal of argument in the Press and elsewhere about the position of Eire citizens after 18th April. The British Nationality Act, 1948, embodied a Commonwealth agreement, the effect of which was that the old position whereby a person was a British subject first, and then, in addition, a subject of a particular Commonwealth country,

was replaced by a scheme whereby citizenship in a particular Commonwealth country was the qualification for being a British subject. The Eire Government, however, had not been willing that all Eire citizens should automatically remain British citizens and hence the 1948 Act had made special provisions for Eire citizens. These were, first, that Eire citizens of the United Kingdom should automatically get the same treatment under our laws *as if* they were British subjects, e.g., if resident, they could vote and were liable to military service. The Act had further provided that anyone who wished *to be* a British subject, and not merely be treated as if he or she were one, could write to the Home Secretary claiming to remain such on the grounds broadly of his association with the United Kingdom or the Colonies. Besides remaining a British subject, the Act had provided that persons resident here or in the service of the Crown could take the further step, if they wished, of applying to be registered as "citizens of the United Kingdom and Colonies." The present Bill reaffirmed all these provisions so that there should be no doubt that they were still in force. He thought that that should settle the difficulties that had bothered Lord Simon in another place and Serjeant Sullivan in the columns of the Press.

As there was a lot of interest in the matter, Mr. ATLEE said he might state the position of Eire citizens as follows: a person is an Eire citizen if (i) he was born in Eire after 1922 or, if born outside Eire, is the son of an Eire citizen and was born after 1922; (ii) he was born in one of the twenty-six counties before 1922 and was domiciled there in 1922; and (iii) he is registered as an Eire citizen. As regards military service, Eire citizens only became liable after two years' residence, and not even then if resident only for a course of education or other temporary purpose. Those who were liable and who raised any objection on the ground of nationality were given the option of serving or returning to Eire. The position of United Kingdom citizens in Eire was governed by an order made under the Eire Nationality and Citizenship Act, 1935, which conferred on them exemption from certain requirements imposed on aliens. The Eire Prime Minister had stated his Government's intention of reviewing the whole nationality position in the near future to ensure that Commonwealth citizens in Eire were afforded by statute rights comparable to those afforded Eire citizens in Commonwealth countries. The Bill further provided that the expressions "His Majesty's Dominions" and "British ships" in any United Kingdom or Colonial legislation should continue to apply to the Republic of Ireland and its ships. Furthermore, provision was made so that it was unnecessary to refer specifically to the Republic of Ireland in any legislation up to 31st December, 1949. Thereafter any United Kingdom legislation which was intended to apply to Ireland would have to say so specifically.

Under the Representation of the People Act, 1948, the qualifying period for a person to vote as an elector to elect a member of the Imperial Parliament was reduced to mere residence on the qualifying date—and that applied to Northern Ireland. Owing to the possibility of persons crossing the border merely for the purpose of being registered as voters, it had been decided to fix the qualifying period in Northern Ireland at three months. Finally, the Bill was retrospective; it would relate back to 18th April, 1949, the date of the corresponding legislation in Dublin. [11th May.

In moving the Second Reading of the Consolidation of Enactments (Procedure) Bill, the ATTORNEY-GENERAL said there were two main criticisms which could be made of our laws: first, in many fields the law itself was unclear, and second, that when it had been clarified, whether by codification or by going to the Supreme Appellate Tribunal, it not infrequently needed reform. The present Bill would assist in the process of clarification. One of the first branches of the law to be dealt with, if the Bill went through, was that dealing with solemnisation of marriages, which was governed by thirty-two different Acts of Parliament or Measures of the Church Assembly. Other sections which required attention were certain aspects of the law relating to charities and the law relating to Revenue, which was in a really shocking state. The two stages of reform would be consolidation of the existing statute law, followed by reform and codification of the law as it ought to be. A separate branch of the Parliamentary Counsel's Office had been established to deal with consolidation matters and several consolidating statutes had already been introduced. The Bill would enable the draftsman first to consider the law as it stood, and when he came across ambiguities, anachronisms and minor anomalies which would prevent the restatement of the law in a clear and modern form he would draft amendments to remove these difficulties and then go on to draft his consolidating measure as if those amendments had already passed into law. A memorandum embodying the amendments would be issued under the authority of the Lord Chancellor, and this would go, together with the consolidating Bill, to the Joint Consolidation Committee. The Committee would hear the draftsman and consider any objections, the matter having been advertised in advance, and if necessary would hear witnesses. They would then inform the Lord Chancellor and Mr. Speaker which of the amendments they were prepared to approve, and, if they approved, then the Joint Committee would itself consider and decide whether the consolidation Bill did in fact do no more than re-enact the existing law with minor improvements and corrections. If satisfied, it would report to the House, and, thereafter, for the purpose of any further proceedings in Parliament, the amendments would be deemed to have become law, though they would be quite unenforceable in the courts at that stage. There would be no question of further amendment on the floor of the House, but if Parliament in its wisdom disapproved the amendments, it could reject the whole consolidating Bill.

Mr. ERIC FLETCHER said the Bill would be welcomed by all members of the legal profession. He hoped that in addition to the matters already mentioned the Government would also be able to undertake an early consolidation of the laws dealing with rent restriction. In reply to a number of questions put by Mr. Fletcher, the ATTORNEY-GENERAL stated that the procedure described was *not* delegated legislation. No question arose of submitting the memorandum to the Committee of the House of Commons on Statutory Instruments. The functions of the House would be first to decide whether consolidation of a particular field of law was desirable at all, and secondly, and through the Joint Committee, to decide whether the proposed amendments were within the definition in the Bill. When the Bill came down to the House on Report Stage and Third Reading the House would not be able to amend the Bill further because the amendments would by then have been embodied in it and be deemed to have already become part of the existing statute law. The memorandum would lie before the House for at least a month before the matter came up for discussion before the Joint Committee and members would have ample time in which to make representations to the Committee. [6th May.

C. QUESTIONS

Town and Country Planning

Mr. SILKIN stated that up to the end of April approximately £715,000 had been paid in respect of development charge. A further £731,000 had been determined and set off against claims on the £300,000,000. The collection up to date was up to his expectations. [10th May.

Mr. SILKIN stated that the decision whether to make a compulsory purchase order under s. 43 of the Town and Country Planning Act, 1947, had been entrusted by Parliament to the Central Land Board and he could not undertake to answer questions about individual cases. He was concerned only when an order had been made by the Board and submitted to him for confirmation. [10th May.

Mr. C. SMITH asked the Chancellor of the Exchequer whether he was aware of the difficult position of certain single-plot holders who bought land after 1st July, 1948, with assignment of any compensation rights possessed by the former owners in respect of Pt. VI of the Town and Country Planning Act, but who were excluded from the benefits of the scheme described in the Central Land Board pamphlet "House 2," and whether, with a view to obviating hardship, he would extend the provisions of that pamphlet to those who had bought land for the erection of a house for their own occupation during the first few months after the Act came into force. In reply, Mr. GLENVIL HALL said that ample warning had been given beforehand of the effects of the 1947 Act, and the fact that these purchasers took an assignment of the vendors' Pt. VI claim indicated that they were not unaware of its provisions. They stood in a different position from those who bought before the Act came into full operation. He regretted, therefore, that it was impossible to adopt the course suggested. [10th May.

Mr. GLENVIL HALL stated that the number of claims made for compensation for loss of development value up to the end of April was approximately 100,000. The total amount claimed could not be stated as claimants were not obliged to state the amount which they claimed. The time for putting in these claims had already been extended once and the Government could not go on extending it. [10th May.

Criminal Law

In reply to questions by several members, the HOME SECRETARY stated that the maximum penalty on summary conviction for cruelty to children was six months' imprisonment and a fine of £25, or further imprisonment in default of payment. On conviction on indictment the maximum penalty was two years' imprisonment and a fine of £100. The Children and Young Persons Act, 1933, contained provisions to safeguard a child in respect of whom a person had been convicted of cruelty, and he saw no reason to think that the powers given by the existing law were inadequate. Provision existed under the present law for remedial treatment in prison of persons convicted of cruelty, and, under the Criminal Justice Act, remedial treatment could be made a condition of a probation order. The penalties he had read out indicated a substantial reserve of power in the hands of magistrates which they did not always use. Whilst he had no reason to think this type of crime was growing—rather was there a quickening of the public conscience giving these cases greater news value—he was constantly considering what it was possible to do for all children who suffered neglect or who were deprived. He had considered whether it might not be desirable to draw the attention of magistrates to the powers which they possessed. He did not know that he had power to order that all such cases be reported to the children's committee of the appropriate local authority, but he hoped that the local authorities charged with the duties under the Children Act and under the Children and Young Persons Act would interest themselves in such cases as came forward. [12th May.

Mr. DUGDALE stated that a scheme for the provision of professional defence for all persons tried by court martial in the United Kingdom had been in operation in the Royal Navy since July, 1948. Arrangements were being made to extend the scheme overseas. No legal qualifications were required under the Naval Discipline Act or the court martial regulations of the person appointed to officiate as Judge Advocate at a court martial. In practice, however, all officers selected for this duty had received a special legal training, and this training was being provided at the public expense so that officers might become legally qualified. [11th May.

Mr. CHUTER EDE stated that on 3rd May, 1949, the number of persons serving prison sentences was 16,543. Mr. Ede also gave details as to the employment of prisoners during the year ended 31st March, 1948. [12th May.

Mr. EDE stated that the total number of prisons in use in 1939 was thirty-seven and in 1949 was forty-five. The comparable figures for Borstal Institutions were eleven and twenty. [9th May.

Mr. EDE stated that the figures for charges of sexual offences in 1948 were as follows: at assizes and quarter sessions, 1,818 convictions and 253 acquittals; at magistrates' courts, 2,000 convictions and 445 cases discharged under the Indictable Offences Act or dismissed or withdrawn. [12th May.

Miscellaneous

Mr. GLENVIL HALL stated that he could not say when the general revision of the Income Tax Acts would take place, but when it did consideration would be given to the method of appointment of General Commissioners and to the property qualification. [10th May.

The SPEAKER said it had been brought to his notice that certain persons were representing themselves as parliamentary agents without possessing the necessary qualifications. A set of rules on the subject had been approved and issued by the Speaker in 1938 under the authority of the House of Commons, and therefore any person contravening those rules was liable to be dealt with by the House for a contempt. [10th May.

Mr. GLENVIL HALL stated that during the first four months of 1949 the number of Statutory Instruments made was 860; Instruments, Rules and Orders revoked numbered 378; and 55 Instruments, Rules and Orders had expired. [10th May.

EARL WINTERTON asked the Minister of Agriculture if, in view of the damage to farming and cruelty to sheep by dogs, he would introduce legislation to enable the police to seize and destroy such dogs if a court order had been made for their destruction. Mr. TOM WILLIAMS replied that s. 2 of the Dogs Act, 1871, gave power to courts of summary jurisdiction, if satisfied that a dog was dangerous, to order it to be kept under proper control or destroyed. If the order were simply that the dog be destroyed, there was a right of appeal to quarter sessions. Some persons, in spite of such order, had kept the dogs alive, but they had to pay a heavy penalty for doing so. [12th May.

Mr. GLENVIL HALL stated that the agreement made in 1926 with Southern Ireland to prevent double taxation would remain in force with the newly created independent Republic. There were a number of such agreements with countries outside the British Commonwealth. [12th May.

Mr. CHUTER EDE stated that of 430 maintenance and guardianship of infants orders made by the Newcastle justices in 1947 and still in force, 80 per cent. were in arrears, though in many cases the arrears were small. The attention of the justices had been drawn, in a circular dated 30th December, 1947, to their powers under para. 5 of Sched. 2 of the Emergency Laws (Miscellaneous Provisions) Act, 1947, to enforce the payment of wife maintenance orders in courts adjacent to the residence of the husband in cases where the husband had left the town from which the maintenance order was originally issued. [12th May.

Mr. BEVAN said he did not propose, in the lifetime of the present Parliament, to promote any legislation dealing with the recommendations made in the Report of the Local Government Boundary Commission of 1946–47. [12th May.

STATUTORY INSTRUMENTS

Import Duties (Drawback) (No. 8) Order, 1949. (S.I. 1949 No. 858.)

Import Duties (Drawback) (No. 9) Order, 1949. (S.I. 1949 No. 868.)

Hair, Bass and Fibre Wages Council (Great Britain) Wages Regulation Order, 1949. (S.I. 1949 No. 864.)

Safeguarding of Industries (Exemption) (No. 3) Order, 1949. (S.I. 1949 No. 869.)

Non-Contentious Probate Rules, 1949. (S.I. 1949 No. 876 (L.9).)

By these Rules the words "a certified copy" are substituted for the words "a sealed copy" in r. 111 of the Principal Registry Rules and r. 104 of the District Registry Rules.

National Insurance (Members of the Forces) Regulations, 1949. (S.I. 1949 No. 875.)

These Regulations reduce the rate of contributions payable by members of the Forces. They also contain provisions relating to persons who are to be treated as belonging to Northern Ireland for the purposes of the National Insurance Act, 1946.

OBITUARY

MR. T. CATTERALL

Mr. Thomas Catterall, solicitor, of Wakefield, died recently, aged 70. Mr. Catterall was a former member of the City Council and was made a freeman of the city in 1937 in recognition of over thirty years' public service. He was admitted in 1901.

MR. E. L. DIGBY

Mr. Essex L. Digby, solicitor, of Nottingham, died on 4th May. Mr. Digby was a governor of the Lamb Charity and secretary of the Robert Wilkinson Smith Charity. He was admitted in 1904.

MR. G. HORAN, K.C.

Mr. Gerald Horan, K.C., Master of the High Court in Dublin from 1926 until 2nd May of this year, died on 10th May, aged 70.

MR. H. S. LYNE

Mr. Horace Sampson Lyne, M.B.E., formerly solicitor, of Newport, died on 1st May, aged 88. Mr. Lyne was President of the Welsh Rugby Union for forty-one years. He was given the freedom of the borough in 1934 in recognition of fifty years' service with the fire service. Mr. Lyne was admitted in 1883.

MR. A. H. TIMMS

Mr. Alfred Henry Timms, solicitor, of Swadlincote and Ashby-de-la-Zouch, died recently, aged 85. He was clerk to Swadlincote magistrates from 1928 to 1945. Mr. Timms was senior Past-Master of the Caernarvon Lodge, of which he was secretary for many years. He was admitted in 1892.

REVIEWS

Lieck and Morrison on Domestic Proceedings. By A. C. L. MORRISON, C.B.E., formerly Senior Chief Clerk of the Metropolitan Magistrates' Courts. 1949. London: Butterworth & Co. (Publishers), Ltd. 25s. net.

No one could be better qualified to produce a comprehensive work on the law and practice in domestic proceedings before justices than the author of this book, which is a remodelled version of Lieck and Morrison's Matrimonial and Family Jurisdiction of Justices, published some years ago. The progressive arrangement of the chapters and the explanatory style in which they are written make the book equally suitable for the study of its subject and for reference on individual points. Authorities are exhaustively quoted and their effect is skilfully worked into the author's argument so that the reader's eye is not perpetually struggling to marry the main text with the footnotes. The appendices contain all the relevant enactments and rules as well as other useful matter. Since the author asks in his preface for mistakes or omissions to be pointed out, his attention is directed to p. 105, where he appears to imply that the existence of a separation order reverses the rule in *Russell* v. *Russell*. It is, of course, only the presumption of legitimacy which is reversed. We also suggest that the usefulness of the book would be further increased by the inclusion of chapters on bastardy and adoption proceedings. As it is, it will be an invaluable guide to practitioners in all matrimonial and guardianship cases.

Essentials of Magisterial Law. By C. B. V. HEAD, LL.B., Solicitor of the Supreme Court. 1949. London: Winchester Publications, Ltd. 35s. net.

Prior to his death on 16th January, 1949, the author of this book for twenty years carried on an extensive practice as a solicitor advocate in the Metropolitan magistrates' courts. In the course of the experiences he thus acquired it inevitably occurred to him that, wide though the scope of the magisterial courts may be, the vast majority of the work falls within definable limits. He therefore set himself the task of keeping notes of the points of law and procedure which most frequently occurred in his practice as an advocate, and it is these notes which form the basis of this book.

The book is divided into five parts, containing respectively a glossary of magisterial law terms, notes on procedure, specific offences and civil jurisdiction, reports of cases quoted, sections of Acts of Parliament and S.R. & O.'s quoted, and, also, a very useful appendix of forms. Thus, whenever in Pts. II and III reference is made to case or statute law, a short note of the case, or the relevant section of the Act *in extenso*, is to be found in Pt. IV or Pt. V.

This arrangement is unusual, but it was clearly the intention of the author to present his material in as readily accessible a form as possible, so that the advocate or practitioner who has to look up a point in a hurry should be able to put his finger immediately upon the authority he requires. In this he has succeeded, and the book should be of great practical value.

The book is completely up-to-date, and includes the changes recently brought into effect by the Criminal Justice Act, 1948, as well as reports of many cases decided up to the end of that year.

In the result, the book is *par excellence* a practical one. In selecting his material, the author has applied one test only, that of utility; and he has collected in 524 pages a vast mass of information of practical use to solicitors, magistrates, police officers, probation officers, and others whose work brings them into constant touch with courts of summary jurisdiction.

The Conveyancer's Desk Book. Twentieth Edition. Pt. I, revised by D. MACINTYRE, M.A., of Gray's Inn, Barrister-at-Law. Pt. II, Annuity Tables, by H. W. MCLELLAN, F.I.A. 1948. London: Sweet & Maxwell, Ltd. 30s. net.

In this volume is reborn an old friend—"The Practical Man"—which first appeared from the pen of Rolla Rouse in 1836 and whose nineteen editions between that date and 1930 were the best testimony of its well-deserved popularity. In the present edition this pocket-sized volume has been thoroughly revised and brought right up to date, and the second part contains a number of annuity tables from the expert hand of Mr. H. W. McLellan. It is impossible within the limits of a short review to enumerate all the notes, articles, forms and reminders that the "Deskbook" contains, but it is quite certain that no other publication can rival it either for the quality or the quantity of the practical information on all aspects of the law of property which it contains.

NOTES AND NEWS

Honours and Appointments

Mr. GRAHAM BERNARD ASTON, B.A., assistant solicitor to Southend-on-Sea Corporation, has been appointed assistant solicitor to Bath Corporation in succession to Mr. R. Hiles.

Mr. A. GORDON BELLINGHAM, solicitor, of Plymouth, has been appointed Town Clerk of Saltash in succession to Mr. C. P. McDonald, who has retired owing to pressure of work at his private practice.

Mr. T. T. CROPPER, clerk to the magistrates at Dudley, has been appointed part-time clerk to the Chester Castle and Broxton magistrates.

Mr. R. H. ELLIS DAVIES, solicitor, of Caernarvon, has been appointed chairman of the new Rent Tribunal for Anglesey, Caernarvonshire and Merionethshire.

Mr. J. ADRIAN HANDS, who recently retired as Town Clerk of Dorchester after twenty years' service, has been temporarily reappointed pending the appointment of his successor.

Mr. K. YATES, of Haslingden, has been appointed assistant solicitor to the Accrington Town Clerk's Department.

Personal Notes

Mr. Alfred Bates, solicitor, of Morecambe, has been elected chairman of the Lancashire County Council.

Mr. Francis R. Earle Clark, solicitor, of Torquay, was married on 7th May, at Torquay, to Miss Barbara Allains Bersell, of Torquay. Mr. Clark is chairman of Torquay Amateur Rowing Club.

Mr. Norman Anthony Cooke, solicitor, of Wakefield, was recently married to Miss Pamela Josephine Pyrah, of Liversedge.

Mr. S. Carlile Davis, solicitor, of Plymouth, has been presented with a silver fruit dish, a replica of Plymouth's wedding gift to Princess Elizabeth, by the present chairman and all past chairmen of Plymouth Mercantile Association in recognition of forty-six years' service as honorary secretary.

Mr. J. R. S. Grimwood-Taylor, solicitor, of Derby, has announced his engagement to Miss Anne Isobel Freeman, of Market Harborough.

Mr. F. W. P. Henning, managing clerk with Messrs. G. F. Lodder & Sons, solicitors, of Henley-in-Arden, has completed sixty years' service with the firm. At seventy-three Mr. Henning is still at his desk.

Mr. Leonard V. Murphy, solicitor, of Oxford, has married Miss Betty Douglas, of Warkworth, Northumberland.

Mr. R. J. Painter, who gained his bachelor of laws degree with honours after spending sixteen months in hospital owing to severe war injuries which included the loss of sight in one eye, has qualified as a solicitor. Mr. Painter served his articles with Mr. J. E. Talbot, of Kidderminster.

Mr. H. Mayne Reid, solicitor, of Wokingham, has been elected to Wokingham Town Council.

Mr. Harry Cecil Rose, solicitor, of Faringdon, Berks, has been elected to Faringdon Council.

Miscellaneous

The Ninth Clarke Hall Lecture, the subject of which is "The Institutional Treatment of Delinquents," will be delivered in the New Hall, Lincoln's Inn, on Tuesday, 31st May, by Sir Alexander Maxwell, G.C.B., K.B.E., formerly Permanent Under-Secretary of State at the Home Office. The chair will be taken by The Right Hon. J. Chuter Ede, D.L., J.P., M.P., the Secretary of State for the Home Department.

Wills and Bequests

Mr. Philip Mark Dodds, solicitor, of Tynemouth, left £18,173.

Mr. F. M. Marston, solicitor, of Wimbledon, left £88,820, net personalty £88,240.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: £3 inclusive (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).